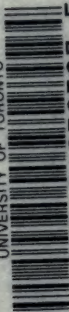


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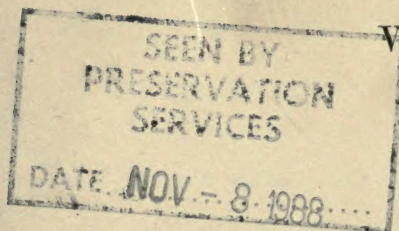
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TO

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MADAM,

During the fifty years of your Majesty's Reign, nearly Eleven thousand Local and Personal Statutes have been passed by the Imperial Parliament, and received your Majesty's Assent. To the vast undertakings completed by Railway and other Companies, and the money expended upon the faith of these Statutes, is due in large measure within this period a social and industrial Progress throughout the United Kingdom of which History affords hardly any other example.

No less memorable during the same fifty years have been the great Sanitary and other Works, together with the numerous Parks, Baths, Picture Galleries, Libraries, and Public Buildings, provided by Local Authorities under Local Acts, adding materially thereby to the health,

DEDICATION.

comfort and enjoyment of your Majesty's subjects in their ever-growing towns, and accomplishing these ends by measures of local self-government in harmony with the best English traditions.

Within the same period Parliament has cheapened, expedited and greatly improved its procedure upon Local and Personal Bills. These Volumes attempt, for the first time, to describe the changes thus made and trace the History of that Private Legislation which, working quietly, is but little noticed, although it has done so much for the public good.

Your Majesty has been graciously pleased to accept the Dedication of my Work. That it may prove one not unfitting memorial of an auspicious Era in a renowned and beneficent Reign is the earnest hope of,

Madam,

Your Majesty's most faithful Subject,

THE AUTHOR.

* * Her Majesty sanctioned this Dedication on the issue of Vol. II. in the Jubilee year 1886-7.

PREFACE

TO THE FIRST VOLUME.

THESE Volumes will, it is hoped, suggest, however inadequately, the public service rendered by Chairmen of Committees and Members of both Houses who, in successive Parliaments, have devoted themselves to the work of Private Bill Legislation. How great and useful a work this is and ever has been, and how essentially it has contributed to the national well-being, may be gathered, though imperfectly, from these pages. But no such record can adequately show the patience and industry which for many centuries have been devoted to this task, accompanied by a solid good sense and knowledge of affairs, without which the task could not have been properly performed.

There is something painful in the reflection that so much unrequited labour, though bestowed on business of enormous value to the whole country, has passed with such scanty acknowledgment. Outside the walls of Parliament these labours are known to a very limited circle. By constituencies they are wholly unrecognised, because generally unknown. It would be agreeable to me if I could hope that these volumes would create a juster appreciation of the public service thus unostentatiously rendered. In the House of Commons there are easier paths to popularity. All the more gratitude, therefore, is earned by members who are content to devote themselves to minor legislation,

without any other reward than the consciousness of a necessary and important duty faithfully done.

“ Minor ” legislation, in one sense, private statutes no doubt are. Yet, if we look at their results in the numerous Acts obtained by Local Authorities, as well as in our canal and railway systems, our water-works, gas-works, tramways, docks, harbour and river improvements, and other enterprises, we may see how immense an influence they have exercised for the public good.

An attempt is made in these volumes to trace the growth of this jurisdiction over personal rights and interests, the powers of local authorities, and those of the trading corporations which have had so sudden a rise and so vast a development, mainly during the Victorian era.

All these rights and powers, intimately affecting the social life of the British people, are the creation of private and local statutes. On the faith of these Acts, a colossal capital has been subscribed and lent under conditions and for objects approved by Parliament, often after patient and prolonged inquiry. Investors have trusted to the continued control of Parliament, and to the security thus afforded against uncalled-for interference with their interests. To this same control, again, the public have always looked for protection against arbitrary powers or monopoly.

Such a control has not always been wisely exercised ; but in fairness it must be remembered that

during the infancy of great undertakings it has often been difficult, if not impossible, to foresee the public safeguards which afterwards became essential. While Parliament, however, asserts and retains a jurisdiction over Private Bills, existing powers may from time to time be revised as their renewal and extension are sought by existing companies. There is thus a guarantee that public interests will in the end be secured, without undue injury to rights which Parliament itself has created.

In bulk and number local and personal enactments far exceed those of a public nature. For example, between the years 1800 and 1884, the number of public Acts has been 9,556; of private Acts, 18,497. No connected account of this great mass of private legislation has yet been attempted, although it has had momentous results in promoting national prosperity, and to all historical students should be full of interest. Some materials, at least, for this unwritten chapter of British history are here supplied. Their collection and arrangement have been a labour of years, and would have been hardly possible but for facilities enjoyed by the Author in watching, professionally, the course of Private Bill practice in Parliament.

Vol. I. contains a sketch of the legislation by which, especially during the close of the last and opening years of the present century, Parliament promoted and regulated Inclosures. This sketch, and some statistics given in the Appendices, may help to explain the effect and extent of a great

revolution in rural society and in British agriculture. Canals, Gasworks, Tramways, Electric Lighting Companies, and other industrial undertakings, have their place in this Volume. British Railways naturally occupy a considerable space. Each of these subjects has a legislative history which might easily fill more than one volume. It has been necessary, therefore, to use great compression; but the main points of inquiry and decision by Parliament have, I hope, been given. A wide field, again, is open for antiquarian research in tracing the origin and early exercise of jurisdiction over private Bills by Crown and Parliament. To this subject some attention is devoted. Other Chapters deal mainly with Personal Petitions, including those for Naturalization Bills, formerly an important, but now almost a disused branch of Parliamentary jurisdiction; for Divorce and kindred measures, a jurisdiction now transferred to a legal tribunal; and for Bills seeking Restitution in Blood, too common incidents of turbulent times. Early local and personal legislation on a variety of subjects is illustrated by precedents. Their quaint language, and the side-light they throw on many noteworthy events of English history, justify their reproduction, and without them any sketch of Private Bill Legislation would be incomplete.

Vol. II. describes the failure of early enactments to secure a proper maintenance of roads and bridges, and follows the course of local and general laws creating Turnpikes, with the more recent statutes which abolished Turnpikes. To the Water Supply

of London three Chapters are devoted, comprising a history of the City Conduits, Morice's Works at London Bridge, the New River Company in its early career, and the York Buildings Company; a sketch of many abortive schemes at various times submitted to Parliament; the rise and fall of more modern enterprises; the fierce competition which at one time prevailed between the Water Companies; and the failure of various attempts to supersede them by a public trust. How the City Conduits were built and maintained, and for how long a period the citizens of London depended upon a water supply afforded by the Corporation, is a story common to other English municipalities. In this view of the London Water Supply, and from its importance now and hereafter, the space it occupies will not, perhaps, be thought disproportionate. Some consideration is given to the statutory history of Docks and Assurance Companies in London, as well as to the rights of Local Authorities under Charters, the abuses from which municipal corporations suffered and were freed in 1835, and their present vast increase of powers under the authority of local and general Acts.

Among other subjects treated in Vol. II. are the Standing Orders of Parliament relating to Private Bills; the Fees charged upon these Bills by both Houses, no small history in itself; the growth of the Provisional Order system, which has considerably lightened the labours of Parliament, and will repay careful study, but requires, it is submitted, equally careful supervision; the changes introduced

by Consolidation Acts; the Methods of Private Bill legislation in both Houses; Procedure in Committees; and the Court of *Locus Standi*. In the foot-notes of both Volumes will be found references to a multitude of authorities which have been consulted, with occasional extracts illustrating the text, and, I trust, increasing its historical value and general interest.

In a work embracing subjects so varied, and covering so great a range, errors and omissions are unavoidable. I cannot hope to have escaped from this common lot, for, though no labour has been spared in collecting and examining authentic materials, the mass of such materials is almost overwhelming. If a future edition be called for, I shall gratefully avail myself of any material corrections which may be pointed out. Meanwhile I have to acknowledge much valuable aid. My friend PEMBROKE SCOTT STEPHENS, Esq., Q.C., of the Parliamentary bar, has given me the benefit of useful suggestions and revision. I have enjoyed a similar advantage, in preparing those parts of Vol. I. which relate to Railways, from the practical knowledge and experience of JAMES GRIERSON, Esq., General Manager of the Great Western Railway. The labour of preparing a copious Table of Contents to each Volume, and a general Index at the end of Vol. II., has been kindly undertaken by PHILIP HENRY CLIFFORD, Esq., of Old Square, Lincoln's Inn, Fellow of Christ's College, Cambridge.

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ERRATA.

Through an alteration in the arrangement of Chapters, the following references should be corrected in the Introduction :—

At page 3, note 3, the reference should be to pages 455-6.

„	4,	„	1,	„	„	Vol. II. c. VII.
„	5,	„	1,	„	„	„ „
„	5,	„	3,	„	„	pages 469 <i>et seq.</i>
„	6,	„	2,	„	„	„ 484-5.
„	7,	„	3,	„	„	„ 480 <i>et seq.</i>

A History of PRIVATE BILL LEGISLATION.

INTRODUCTION.

CONSIDERING how largely private legislation has contributed to social and material progress within the United Kingdom, but little attention has been given to its origin and development. One reason is, that it has rarely been prominent in debate, or the subject of exciting agitation outside Parliament. Most people are aware that, from the earliest times, by private or quasi-public measures, Parliament has made laws affecting personal and local interests as well as the interests of the whole community. But private bills have ever been the humble companions of public measures, largely ignored at one period in the statute book,¹ hardly noticed by contemporaries, almost wholly neglected in history.

Private legislation obscured by public measures.

That this obscure lot should have fallen to private legislation was not the fault of Parliament itself. The earliest journals of both Houses show traces of continuous diligence and industry bestowed upon private bills,² with a continued

Importance attached to private bills by Parliament.

¹ In the fifteen years between 1801-14, the number of private Acts not printed was 1,298. Since then the numbers not printed have gradually diminished. In the ten years ending 1883 only ten private Acts were omitted from the statute book. (See Appendix A.)

² Once, indeed, no doubt for good cause, there was a break in this business. In 1571, members of the

Commons appointed to hold conference with the Lords, "brought report that, as the season waxed very hot and dangerous for sickness, so the Lords desired that this House would spend the time in proceeding with necessary bills for the commonwealth, and lay aside all private bills in the meantime." (1 Com. J. p. 85.)

Service on
Committees.

watchfulness lest these should encroach upon public rights or injuriously affect the rights of individuals. By inquiry in Committees, by arguments and evidence at the bar of either House,¹ Parliament was careful that great concerns of State should be no excuse for neglect in discharging minor duties. Its most eminent members, statesmen, prelates, politicians, did not grudge their help towards this work,² but recognized how powerful was the influence they thus exercised in meeting new wants and developing national wealth; how indispensable, also, under varying social conditions, was the control of Parliament in determining the expediency of any powers sought, in preventing monopoly, and, at the same time, in giving fair protection to private interests and free play to private enterprise. Nor did Parliament allow this work to be slurred over or evaded. Peremptory orders frequently occur in the Commons' Journals, when bills were committed relating to estates or raising legal questions, that such Committees should be attended by all members of the long robe. And if space was wanting for these inquiries at Westminster, they were still not to be delayed, for Committees were appointed to meet at the Temple Church and the Savoy, at Guildhall, at the halls of the Middle and Inner Temple, or some other place outside the walls of Parliament where members might conveniently assemble.³

Personal
Acts.

When the objects of special measures rarely went beyond a few *privilegia* sought by individuals, or exactions and spolia-

¹ Inquiry and evidence before a Committee did not necessarily preclude a repetition of arguments by counsel and a re-examination of witnesses before the whole House. (See Proceedings on Bridgewater Canal Bill, 1762, p. 36.)

² Sir Francis Bacon served in 1605 on the Thetford School and Alms-house Bill (1 Com. J. p. 259); Sir Edward Coke in 1623, upon Heron's Estate Bill, and a bill for confirming

the Foundation of the Charterhouse (ib. pp. 681, 685); Selden upon a Naturalization Bill: and great names constantly occur among the private Committees of these and later periods.

³ After 1580 the Temple Church ceased to be appropriated to this secular use, but Committees of the Commons continued for many years to meet at the halls of the Inns of Court and City Companies. (1 Com. J. pp. 85 *et seq.*)

tions by the Crown, it is easy to account for much indifference to the records of such legislation. Bills of attainder, bills to reverse attainder and remove this taint from the blood of descendants,¹ bills to reward the king's favourites with forfeited estates, or to mulct and banish his enemies, recur with a monotonous regularity in the statutory chronicles of Plantagenets and Tudors, and form a sad record of royal tyranny and of subserviency by Parliaments.² Nor is the statute book perhaps less dull when it naturalizes foreigners, confers on land-owners powers to sell, lease, disgravel or exchange, or otherwise relaxes some of the incidents of feudal tenure. We soon come, however, to objects which, though limited to certain districts, intimately concern the general well-being. Even in 1357 sea fishing at Great Yarmouth and on the east coast was a matter of high moment; the fish, too, when caught must reach consumers in the proper markets without intervention by forestallers, including especially those hostlers who lodged the fishers and sold herrings "as dear as they will, giving to the fishers what pleases them."³ So with the salt fish of Blakeney, which was sold too dear, to the great hurt of the people, whereof the Commons prayed a remedy.⁴

Estate and
Naturaliza-
tion Acts.

Sea fisheries.

Weirs in rivers were denounced in public and private Acts unceasingly from Magna Charta downwards, and, like other objects of denunciation in later times, seem to have been little the worse for it. They were a vested interest which must have enjoyed powerful protection;⁵ and the salmon,

River weirs,
and fishing.

¹ So lately as the year 1824, Acts were passed reversing attainders against the families of Nairn, Jer-ningham, Erskine, Drummond and Gordon; and in 1826 there were similar Acts restoring their titles to the Earl of Carnwath, the Earl of Airlie, Lord Duff and Lord Elcho. A few Acts of the same description have been sanctioned during the present reign. *Post*, pp. 367 *et seq.*

² See, among other examples, the private Acts passed in the reign of

Richard III., proving the king to be true and undoubted heir to the throne, and making his brother's children illegitimate.

³ 31 Edw. III. c. 2, *post*, p. 391.

⁴ Stat. *De piscce salito de Blakeney*, 31 Edw. III. c. 3.

⁵ It appears from the second Charter of Richard I. to the City of London (in 1197), that the owners of weirs in the Thames paid certain dues in respect of them to the constable of the Tower on behalf of the king.

for which successive Parliaments tried to ensure free passage to the upper waters, continued to be caught on their way in spite of statute.

Highways.

Statute
labour.

While doing its best to cheapen sea and river fish as food for the people, Parliament found that the old common law liability of parishes to maintain their highways was faulty, and that some more effective means must be provided in particular cases. Thus, in 1421, certain public roads passing through the Abbot's manor, near Abingdon, had been repaired by inhabitants of that town out of their own proper goods, and alms by them collected; and provision was made for future repairs, with free passage for all the king's liege subjects for ever, on horse and foot ("si bien à chival come a pèe"), the Abbot and his convent notwithstanding.¹ But voluntary contributions and alms even for these necessary purposes were seldom forthcoming. To amend, therefore, the roads around Oxford, occupiers must furnish, in proportion to the size of their holdings, wains with oxen, horses or other cattle, with able men to load and unload; and all cottagers (not being hired servants) must contribute labour.² This system of forced labour was made of general application;³ and upon notice given in parish churches after morning prayer, waywardens were to be chosen to manage the work. Then to prevent undue wear and tear, it was enacted that, with exceptions as to husbandry and the king's service, no waggons should be drawn by "above six horse beasts," or "eight oxen." Still the remedy failed, and English roads remained among the worst in Europe.⁴

¹ 9 Hen. V. c. 11, *post*, Chap. "Highways and Roads," p. 432.

² 18 Eliz. c. 20.

³ 14 Car. II. c. 6.

⁴ "It was only in fine weather that the whole breadth of the road was available for wheeled vehicles. Often the mud lay deep on the right and the left; and only a narrow track of firm ground rose above the quagmire. It happened, almost every day, that coaches stuck fast, until a team of

cattle could be procured from some neighbouring farm to tug them out of the slough. But in bad seasons the traveller had to encounter inconveniences still more serious. Thoresby, who was in the habit of travelling between Leeds and the capital, has recorded in his diary such a series of perils and disasters as might suffice for a journey to the Frozen Ocean or the Desert of Sahara. On one occasion . . . he was

A mixed system of forced labour and assessment was therefore tried; and in another century, toll-gates were substituted,¹ statute labour was abolished, and a foundation was laid for the passing of 3,800 private and local Acts, authorizing 22,000 miles of turnpike roads, the annual repair of which cost 1,122,000*l*.² Then this system, created by Parliament after so much thought, and with such infinite toil, broke down in its turn, leaving fair roads, but a hopeless accumulation of debt: one example out of many of great public benefits conferred by private legislation at the cost of private investors.

Highways were not alone to be mended. A growing trade with parts beyond the seas required that ports and havens should be looked to and deepened, that waterways should be cleared from shelves or shoals,³ and consideration given to many pitiful complaints from townspeople of the decay of their ancient roadsteads and harbours through the

Ports, havens
and rivers.

detained at Stamford four days, on account of the state of the roads, and then ventured to proceed only because fourteen members of the House of Commons, who were going up in a body to Parliament with guides and numerous attendants, took him into their company. The great route through Wales to Holyhead was in such a state that in 1685 a viceroy on his road to Ireland was five hours in travelling fourteen miles from St. Asaph to Conway. Between Conway and Beaumaris he was forced to walk great part of the way, and his lady was carried in a litter. His coach was with great difficulty, and by the help of many hands, brought after him entire. In general, carriages were taken to pieces at Conway, and borne on the shoulders of stout Welsh peasants to the Menai Straits. In some parts of Kent and Sussex, none but the strongest horses could in winter get through the bog in which, at every step, they sank

deep. The markets were often inaccessible during several months. It is said that the fruits of the earth were sometimes suffered to rot in one place, while in another place, distant only a few miles, the supply fell short of the demand. The wheeled carriages were in this district generally pulled by oxen." Macaulay's History, c. 3.

¹ By 15 Car. II. c. 1, in the counties of Hertford, Huntingdon and Cambridge. In 1346 a toll for "pavage" was levied by the City authorities on vehicles passing from St. Giles's-in-the-Fields to Temple Bar. The first statute sanctioning tolls was that cited. See *post*, Chap. "Highways and Roads."

² Report of Royal Commission of 1840 on State of Roads in England and Wales, p. 9.

³ See statutes passed in 1424, and subsequently, for surveying and amending defaults in the Lea and other rivers, cited *post*, pp. 404 *et seq*.

reckless casting out of ballast. More than 300 years ago, tonnage rates on shipping were allowed to be levied for the improvement of Dover harbour, as being a convenient refuge in the narrow seas for ships sheltering from tempests, pirates, or the common enemy in time of war.¹ These rates, however, were granted only upon full assurance "that skilful men have contrived a probable plan and undertaken the finishing and perfecting thereof for a competent sum of money;"² a task upon which skilful men have been engaged ever since, by virtue of statutes passed in almost every succeeding reign, including five at least in that of Queen Victoria.

Before havens and waterways could be used for commerce, ships must be free from molestation, and in the estuary of the Severn, in the years 1430-1, many Welshmen and ill-disposed persons were used to "assemble in manner of war," and stop trows, boats, and floats or drags, on their way with merchandize to Bristol, Gloucester, Worcester, and other places; hewing in pieces these craft, and beating the sailors with intent to force them to hire boats from the said Welshmen, for great sums of money: an evil example and great impoverishment of the king's liege people, if remedy were not hastily provided.³ Prompt remedy would have been afforded by despatch of a royal cruiser, had his Majesty's navy then been able to supply one. The only statutory cure tried was a declaration that if any man's free passage in the Severn were thus hindered he should have his action according to common law; but there is reason to fear that Welshmen then laughed the common law to scorn. Eighty years afterwards, certain "misruled persons," the foresters of Dean, were guilty of like misdeeds. The free passage of rivers was hindered, too, by passing tolls unlawfully set and levied on merchants and owners of goods by local authorities in riverside towns. The

¹ Rye and Winchelsea in 1548 (2 & 3 Edw. VI. c. 30).

² 23 Eliz. c. 6, *post*, p. 420. Much money was also spent in improving

the harbour in the two previous reigns.

³ 9 Hen. VI. c. 5.

Dover har-
bour.

The Severn.

Passing tolls.

king's highness, by advice and assent of Parliament, had to provide remedies for these complaints by local traders, and at the same time retain for rising municipalities such just dues on vessels or goods as they could show a clear title to.¹

From the deepening of rivers for purposes of navigation, New cuts. the next step was to straighten them by new channels. The Corporation of London stand honourably first in undertaking this work, and were authorized in 1571 to bring the River Lea to the north side of London by "such a convenient and The Lea. meet cut as may serve for navigation," maintaining substantial banks to guard against floods.² So at Chichester, Chichester haven. "taken to be at this present time the best haven between Portsmouth and Thames' mouth," very necessary and commodious to ships in extremity of tempest and foul weather, the mayor and citizens obtained powers to cut out, trench and draw the haven to the city suburbs, which, in the opinion of "divers wise and discreet persons, skilful and experienced in like works, may very easily be done in respect of possibility;" a delightful saving clause, put in, one may suppose, by the engineer, to show that money was even then the only limit to engineering achievements.³ Grants of similar powers lead on to a long course of improvements in the navigation of rivers, begun under James I., but chiefly carried out by means of private Acts passed after the Restoration.⁴

These and other early works of improvement were carried Improvements by municipalities. out by municipal bodies. Three hundred years ago, private adventurers or undertakers, as they afterwards came to be called, were not easily found. It was still more difficult to raise money for such purposes. Local authorities alone were able or willing to do so; but even their enterprises, after being sanctioned by the Legislature, appear to have often broken down through want of funds. They were the first, however, to encourage trade by spending upon

¹ 19 Hen. VII. c. 18.

² 13 Eliz. c. 18. See also 3 Hen. VI. c. 5, and 9 Hen. VI. c. 9.

³ 27 Eliz. c. 22; *post*, pp. 416 *et seq.*

For the latest legislation to the same effect, see Chichester Harbour Embankment Acts, 1859, 1864 and 1867.

⁴ 13 & 14 Car. II. *et seq.*

Docks.

harbour or river improvements such money as they could command from their corporate property, or as could be raised upon the security of the scanty rating powers granted by Parliament. The earliest docks at Liverpool and other ports were also built, under statutory powers, at the expense of municipalities. In Liverpool the Corporation, in the year 1709, were minded to lessen the dangers which beset ships entering their port "for want of proper landmarks, buoys and other directions," and for want also of a convenient wet dock or basin. They therefore gave, for the latter purpose, four acres of land, parcel of the waste belonging to them, lying near "the Poole"; but as the proposed works would "cost more than the inhabitants and Corporation can raise," they procured an Act authorizing them, for twenty-one years, to charge rates on ships entering the port.¹

Two Pennies
Scots Acts.

In Scotland most of the municipal authorities received aids from Parliament for like objects by means of a curious series of Acts known as the Two Pennies Scots' Acts. The earliest of these were passed by the Scotch Parliament,² and were confirmed and renewed, and fresh privileges to the same effect granted, after the Union. By virtue of these Acts, Town Councils were authorized, during certain limited periods, to charge duties of two pennies Scots, or the sixth of a penny sterling, on every pint of ale or beer sold within their boundaries. These duties were in addition to the public excise. The privilege of imposing them was conferred, according to several of the preambles, as rewards for the loyalty of the townspeople and for their zeal "in supporting and defending the Protestant interest;"³ the revenue thus raised was to be applied to specified local objects.

Edinburgh.

At Edinburgh these objects included the renewal of water-pipes and conduits, enlargement of the harbour,

¹ 8 Anne, c. 12. The term was extended by 3 Geo. I.; by 11 Geo. II., the corporation were authorized to enlarge their wet dock and build a pier.

² In 1693, applying to Edinburgh and Glasgow.

³ Preamble to 3 Geo. I. c. 5. See *post*, Chap. "Local Authorities."

deepening the channel at Leith, and building a new quay there. Glasgow was mentioned in its Act with special Glasgow. honour as a place distinguished for great natural advantages, "but yet more considerable for its loyalty and zeal for the reformed religion, the constitution and liberty of the people," and by raising a well-armed and disciplined force for the defence of the Government since the Revolution "on divers very remarkable occasions, and lately in a most cordial and cheerful manner, in opposition to the most unjustifiable rebellion begun and carried on by a Popish Pretender." While, therefore, the merit of laudable services was fresh in memory, and to the end that other cities might follow their example, "seeing that just encouragement is provided as a reward of duty and loyalty," this ale and beer tax was granted to the Corporation for sixteen years towards enabling them to pay their debts, "beautify" their city, and improve their trade.¹ Dundee, Dumfries, and many other burghs obtained similar privileges, on condition of applying the money towards useful local purposes, including improvement of harbours and water supply.

In England at an early period we find municipal bodies obtaining the sanction of Parliament for the supply of their towns with water. Gloucester appears to be first on the record, in 1541-42. There were then, and long had been, ancient conduits conveying water to the city. As those had decayed, the Mayor and Dean of Gloucester were jointly authorized to renew them and dig for springs.² The Act is of interest as the earliest of its kind, and also for its carefully-drawn compensation clauses, in case of injury to private owners.² Two years afterwards, the Corporation of London London. obtained similar powers.³ The recital to the Act declares that theretofore the city of London had been abundantly furnished with water by ancient conduits; but as the supply had failed,

Watersupply.

By Corpora-
tion of Glou-
cester.

¹ 1 Geo. I. c. 44.

² 33 Hen. VIII. c. 35.

³ 35 Hen. VIII. c. 10; and see *post*, Chap. "London Water Supply."

Sir William Bowyer, the Mayor, calling to his aid "divers grave and expert persons," had found plentiful springs at Hampstead Heath and other places, and had devised means of conveying this water to the city at the charge and cost of the Corporation. The clauses protecting landowners are more elaborate than those in the Gloucester Act, and show the growing respect paid to vested interests. According to both statutes the two Corporations had then and long before recognized it to be their duty to furnish the townspeople with a good supply of water, not charging rates for it, but allowing it to be taken at the public fountains by all comers. Private enterprise in this direction was a later development. Sir Francis Drake brought water by the Leet from Dartmoor to Plymouth under the authority of an Act of 1585.¹ Sir Hugh Middleton carried out in 1613 powers which Parliament had granted to the Corporation of London in 1606-7.² Municipal authorities, therefore, who have in recent years taken over the water service from private companies have only returned to the old ways.

Land reclamation and drainage.

The protection or reclamation of land by embanking and draining, and the inclosure of commonable or waste land, have been frequent subjects of public as well as private legislation, and form an important chapter in the industrial development of the kingdom. Early law and custom, going back far beyond the time of legal memory,³ threw upon holders of marsh lands the obligation of keeping up sea walls, paying special rates assessed for that purpose by conservators of their choice. The same functions were discharged in other districts, under statute, by Commissioners of Sewers, whose name now suggests very limited duties, but who were formerly charged with the protection of low-lying lands from inundation by sea or river.

Commissioners of Sewers.

¹ 27 Eliz. c. 20.

² 3 Jas. I. c. 18, and 4 Jas. I. c. 12, which amended and explained the previous Act, providing that the New River might be conveyed through a trunk or vault of brick or stone, as

well as by an open trench or cut.

³ The law and custom of Romney Marsh are mentioned as "ancient and approved" in an Ordinance of Hen. III.—650 years ago.

Their statutory history begins in 1428.¹ There was a ceaseless struggle to keep out the sea, especially on the east coast. Four statutes were passed in the reign of Queen Elizabeth, and two in that of James I., to provide for the maintenance of sea banks in Norfolk alone.² The draining and “inning” of marsh land in Kent, Essex, Durham, the Isle of Ely and elsewhere, were also subjects of general legislation in 1601.³

James I. took great interest in the reclamation of land in the fen districts, and in 1606-7 induced Parliament to pass an Act for draining “certain fens and low grounds within the Isle of Ely, subject to hurt by surrounding, containing above 6,000 acres, compassed about with certain banks commonly called the Ring of Waldersea and Coldham.” This was the first Act which authorized reclamation in the fens; but, as we shall see, it was preceded by several local statutes of the same kind applying to drowned land on both banks of the Thames, and in its general framework it followed those precedents. There were three adventurers who undertook to finish the works in seven years, their reward being two-thirds of the area drained; but this grant was to be void if the lands were again overflowed.⁴

The Ring of
Waldersea.

The story has often been told of reclamations and émbankments in the fens—by Roman legionaries; by bishops,⁵ abbots, and monks; and by Vermuyden and his Dutch workmen, persevering, though not always with success, in spite of local jealousies and financial difficulties.⁶ By their labours, and

The Fens and
Bedford
Level.

¹ 6 Hen. VI. c. 5, a public Act, followed by two others of the same reign, and by a long list of statutes in succeeding reigns.

² 27 Eliz. c. 24 *et seq.*

³ 43 Eliz. c. 11.

⁴ 4 Jac. I. c. 13; 15 Car. II. c. 17, s. 45. In 1562 a bill was read a first time, and referred to a Committee in the Commons, enabling the Bishop of Ely to part with the manor of Waldersey, in order to repair the banks; but it did not pass. (1 Com. J.

p. 64.)

⁵ Morton, Bishop of Ely, in the reign of Henry VII., constructed a cut for navigation, as well as for drainage, between Peterborough and the sea, forty miles long, and deserves the title of being the first canal maker in England.

⁶ Dugdale, whose History of Émbanking and Draining was published in 1652, was employed in the drainage of the great Bedford Level in 1643.

those of Rennie and other engineers in later times, under the authority of private Acts, "680,000 acres of the most fertile land in England, or an area equal to that of North and South Holland, have been converted from a dreary waste into a fruitful plain."¹

River floods. Mischief done by river floods was hardly less serious than that wrought in the fens and upon the coasts, though rivers subsided, while the sea never gave back what it once swallowed up. Around London the Lea and the Thames were great offenders.

The Thames. The floods from which the low-lying lands within the Metropolis still occasionally suffer are really attempts by the river to regain possession of districts which it formerly always overflowed at high tides. And Vermuyden in the fens only carried out upon a larger scale, some 100 years later, reclamations similar to those which his countrymen had already accomplished or attempted in or near London. An Act of 1535-6,² recites that one Cornelius Vanderdelff, of Brabant, had at his own proper costs and charges

Stebonhythe. "workmanly and substantially inned and fenced" 130 acres of ground beside St. Katherine's and near the Tower, formerly overflowed by the Thames, and had received one-half of the ground for his pains. Eight years later, Vanderdelff was allowed by Parliament to reclaim and inclose Wapping Marsh.³

Wapping.

Plumstead and Erith. Statutes of 1530-1⁴ and subsequent years describe the drowning of Plumstead and Erith marshes through "the outragiousness of the river of Thames," and breaches made by it in the embankments. Rates were imposed upon adjacent landowners, in proportion to their acreage, to keep up the walls and drain off the river; and the day of payment was duly proclaimed as of wont in the parish church of Plumstead. These methods were ineffectual, and in 1566, John Baptista Castilian, one of the grooms of the Chamber,

¹ Smiles's "Drainage of the Great Level;" *Lives of the Engineers*, Vol. I. p. 68.

² 27 Hen. VIII. c. 35.

³ 34 Hen. VIII. c. 9.

⁴ 22 Hen. VIII. c. 3.

with other persons, were authorised to reclaim Plumstead Marsh, receiving one-half of the land in return.¹ The works were to be completed within eight years, but they could not be finished within that period by reason of "the huge charge," and because also, "during the time of restraint between this realm and the Low Countries, workmen most fit for that purpose could not be had by any means." In 1580-1, therefore, eight years more were assigned for this reclamation. The draining of Greenwich marshes was sanctioned in 1546.² On the opposite bank the river made repeated breaches at Dagenham and Havering; and again Parliament more than once supplied the requisite authority to curb and restrain this restless and unceasing foe.³

Greenwich.

Dagenham
and Havering.

While these efforts were made to win land from sea or river, or secure it from encroachment, Parliament was called upon to aid in a work which, for good or for evil, did still more to change the face of the country. The inclosures which in 1549 chiefly occasioned Kett's rebellion in Norfolk,⁴ and so many risings in Devonshire and other parts of England, were unauthorized by private statute. It was not till 1606-7 that Parliament sanctioned the first of a long line of Inclosure Acts. They were few in number, however, until the latter half of the 18th century. In the 25 years from 1719 to 1743, there were 87 of these Acts; in the 25 years from 1770 to 1794,

Kett's rebellion.

¹ 8 Eliz. c. 22.

² 37 Hen. VIII. c. 11.

³ 13 Anne, c. 20.

⁴ "The occasion of this rebellion was because divers lords and gentlemen who were possessed of abbey lands, and claimed large commons and waste grounds, had caused many of these commons and wastes to be inclosed, whereby the poor and indigent people were much offended, being thereby abridged of the liberty they formerly had to common cattle, &c. on the said grounds to their own advantage. The Lord Protector (Edward Seymour, Duke of Somerset,

uncle to Edward VI.) . . . caused a proclamation to be published that all persons who had inclosed any lands that used to be common should lay them open again before a fixed day, on a certain penalty for not doing so. This so much encouraged the people in many parts of the realm, that, not staying the time limited in the proclamation, they gathered together in a tumultuous manner, pulled up the pales, flung down the banks, filled up the ditches, laying all such inclosed lands open as they were before." (3 Blomefield's History of Norfolk, p. 222.)

there were 1,058. They became even more numerous after 1800, but at the close of the war began to decrease in number. As we know, they are now rare, and are watched with extreme jealousy in and out of Parliament. But between 1719 and 1845, more than 4,100 Inclosure Bills became law.¹

Common and
commonable
lands to be
distinguished.

These inclosures, so formidable in numbers, so vital in their influence upon the oldest and largest English industry, are sometimes treated as though they applied entirely to commons, the waste land of the manor, over which the lord and his tenants had concurrent rights. They require, however, to be carefully distinguished. Two statutes of the thirteenth century² authorized lords of manors to "approve"³ land from the waste, provided they left sufficient pasture to the commoners, and did not infringe upon any common rights of turbary, piscary or estovers.⁴ It was under these general Acts, though probably without much regard to the conditions and qualifications they imposed, that the lords made the inclosures which led in 1549 to so much popular discontent and tumult.

Statutes of
Merton and
Westminster.

Commonable
lands.

Besides, however, the commons or wastes not granted by the lord to freeholders, or reserved for cultivation as part of his own demesne, there were all over England large tracts of commonable lands, both arable and pasture, held in severalty for certain defined periods, at the end of which they became subject to common rights.⁵ In most English

Common or
open fields.

¹ See Appendix B, No. I.

² Statute of Merton, 1235 (20 Hen. III. c. 4); Statute of Westminster, 1285 (13 Edw. I. c. 46); confirmed and explained by 3 & 4 Edw. VI. c. 3.

³ The old form of "improve." It here meant improvement by inclosure. In the two earlier statutes cited, "approversment" is the word used; in the Act of Edw. 6, "improvement."

⁴ Rights to cut turf, to fish, or to lop or cut wood for fuel, and for repairs of buildings, implements of husbandry, and hedges or fences.

⁵ Pastures were called "stinted" where the commoners were only allowed to turn upon them a limited number of sheep or cattle. The common rights of pasturage on commonable lands were of limited duration, as for the whole year, save when the lord used them for his cattle; or from the time when the hay was carried until Candlemas; or, in the case of Lammas lands, for eight months after Lammas-day (August 1). One person had the right to mow; others, the right to stock lands after the first hay-crop.

parishes, the arable land was cultivated in what were called common or open fields, generally divided in acre or half-acre strips, each strip separated by a balk of turf, sometimes narrow, sometimes broad, and overgrown with bushes.¹ Adjoining strips were not necessarily owned or cultivated by the same person. Freeholds and copyholds were sometimes intermixed. It was as if each strip had been awarded by lot,² without the least regard to union of properties or convenience of cultivation, so that one man's holdings were "scattered about on all sides of the township; intermixed and, it might almost be said, entangled together, as though some one blind-fold had thrown them about on all sides of him."³

After harvest, these arable or meadow lands became commonable; usually only to persons having severalty rights. They were often unstinted; there was no limit to the stock which the commoners might turn upon them. In other cases, after the severalty crops had been removed, the lands were commonable to the whole parish, or to a class of persons residing there. In some parishes, there was a person called a flock-master, who, during certain months of the year, could turn his sheep on all the lands of the parish. His right was

Common
rights after
harvest.

¹ Even now, in the Isle of Axholme, where small peasant freeholds exist side by side, a deep furrow is often the only division to mark a separate ownership.

² This, indeed, was the primitive method adopted in settling the choice of shifting severalties, hereafter mentioned, upon the old lot meadows. (Commons' Committee on Inclosures, 1844; Minutes of Evidence, p. 27.) So in an Act of 1535-6, providing for the partition of reclaimed land at St. Katherine's, near the Tower of London, certain parcels are to be divided by lot. 27 Hen. VIII. c. 35.

³ Seebohm's "English Village Community," p. 7. In a map showing about one-third of the Hitchin open fields, as they existed early in

the present century, there were 289 scattered pieces of land, owned by 48 persons. Taking into account the remaining two-thirds, "each owner probably held in the parish three times as many" separate parcels of land. Mr. Seebohm sees in these open fields of arable land "the common fields of a village community or township under a manorial lordship." A similar system prevailed on the Continent; and Sir Henry S. Maine finds its counterpart, and possibly its origin, in the village communities of India. The same analogy, pointed out by an earlier authority on Indian history, was mentioned before the Committee of 1844. (See p. 16, note.)

occasionally restricted by custom, in order that farmers might be able to put in a wheat crop; but, in the absence of such custom, farmers could sow no wheat without having made a bargain with him for shutting up the fields set apart for such crops. In cases where the area of commonable land was small and the right of depasturage unrestricted, the whole herbage was often destroyed in a fortnight or three weeks.¹

Shifting
severalties.

Another curious incident affecting these severalty and commonable lands was that, in many cases, the severalties shifted from year to year, or from time to time, according to the manorial custom. What was called a "pane" of land might contain forty or sixty different lots. If they were pastures, the occupier of lot one took lot two the next year, and so went through the lots in regular rotation. If the lands were arable, the severalty did not shift annually, but periodically, according to the rotation of crops. Many commonable meadows had their own peculiar customs regulating changes in the severalty ownership.²

¹ Commons' Committee on Inclosures, 1844, p. 27: evidence of Mr. Blamire, one of the Tithe Commissioners, and formerly M.P. for Cumberland, a gentleman of great ability and experience, and a high authority upon this class of questions.

² *Ib.* p. 27. By an old military custom, formerly prevailing also in parts of the Continent, on days appointed for the shift of severalties, the best man of the parish used to take possession of any lot he preferred. If his choice was challenged, there was a fight for possession; the survivor, or the better man, took the first lot, and the right of first ownership to each succeeding lot was settled by the same method, when it was thought worth a contest (Blamire). Another Tithe Commissioner, the Rev. Richard Jones, derived the origin of lot meadows from the primitive custom

among village communities of so distributing and redistributing the small area of their cultivated land, when hunting was their chief means of subsistence. In support of this view he cited Mr. Mountstuart Elphinstone's account of the Eusofzye tribe of Afghans, in whose villages the lands are re-distributed every ten years; other Afghan tribes interchange lands in the same way, at periods varying from one to twenty years. "Mr. Elphinstone quotes, in a note, well-known passages from Tacitus and Caesar, which show the same custom to have prevailed among the ancient Germans. When Volney wrote it had not become quite obsolete in Corsica. The Saxon ancestors of the English, there can be little doubt, brought this custom with them from their native forests." (*Minutes of Evidence*, p. 150.)

It is difficult to exaggerate what must have been the prejudicial effect upon English husbandry of such intermixtures of lands and varying tenures. Some good results these may once have had, in establishing common interests and knitting together communities, or the system would not have lasted so long. But it checked enterprise. It made effectual drainage all but impossible. It required a stated three-course rotation of crops and fallow, and a dead uniformity of cultivation, for all must sow the same crops and at the same period. By its mingling¹ of small properties in different hands, each property difficult of access, and situated sometimes at no inconsiderable distances from each other, the waste of labour must have been enormous. Even if we assume in early times a system of joint or co-operative ploughing, we can hardly assume common barns.² Each owner, when individual property became well defined, must therefore have provided necessary buildings; and cartage from outlying parts of his land must have been a heavy burden. The strips were so narrow that to plough the land across them was out of the question.

Intermixed lands.

Injurious effect upon agriculture.

Ming lands.

When improved methods of cultivation became known, turnips or clover could not be grown on these narrow strips except by arrangement, and in the majority of common fields no such arrangement could be made. In every third year a crop was not attempted; there was nothing but dead

¹ Hence "ming" lands, meaning mingled or intermixed commonable land, the exact position of which had been lost sight of. When a person owning in severalty a small quantity of commonable land let it to another person with whose holding it was intermixed, the separating balks were sometimes ploughed up, and in time, through neglect on one side and perhaps design on the other, it became impossible to identify the locality of these lands. (Blamire, *ib.* 31, 32.)

² At Hitchin there was a common

herdsman who drove the cows of the township daily to the common, or, at the proper season, to the Lammas meadows (Seebohm, p. 13); and, according to a custom of the manor, the rectors of Hitchin were bound to provide a common bull to go with the township cows. (Presentment of Court Leet, 1821; *ib.* p. 448.) The author assumes that, in this and other cases, after the crops were ingathered, these open arable lands became commonable, and the sheep of the township were pastured upon the strips and balks at will (p. 13).

fallow, with sheep overrunning the whole field. The want of proper manure was very marked; and sheep-folding or stocking during the commonable period supplied this want inadequately. Slovenly farming, too, on a few strips might produce weed crops, which sowed themselves all over the field, marring any attempts at better husbandry. Under such conditions the proper cultivation of the soil was impossible; and the evil was made more serious, because these intermixed and commonable lands were the best in the kingdom in point of natural fertility, and for this reason, no doubt, were first chosen to be put under the plough. Notwithstanding this natural fertility, competent witnesses estimated that, as a general rule, chiefly through want of drainage, a fourth part of all the open arable land in the country was totally unproductive.¹

This slight sketch will show that radical changes were necessary at the period of the Inclosure Acts before any material improvement could be effected in English agriculture,² and will also help to explain the descriptions of land

¹ Commons Committee on Inclosures, 1844. Among much evidence to the same effect see that of Mr. T. Smith Woolley, land agent and assistant tithe commissioner, pp. 237, 294; and Mr. Blamire, p. 18. Even in 1844 the area of these lands was still very extensive, especially in those parts of the kingdom that were first cultivated. Mr. Blamire produced tithe maps of three places, taken hap-hazard:—1. Township of Barmby-on-the-Marsh, Yorkshire, total contents of township, 1,692 acres; number of parcels of open land, 1,152, containing 1,015 acres, giving an average size of 3 roods 23 perches; old inclosures of severalty lands, 352, containing 677 acres. 2. Parish of Chinnor, Oxfordshire, total contents, 2,688 acres; number of parcels of open land, 2,340, containing 2,016 acres, giving

average size of 3 roods and 18 perches; inclosures of severalty lands, 61, containing 672 acres. 3. Parish of Cholsey, Berks, total contents, 2,831 acres; parcels of open land, 2,315, containing 2,327 acres, an average size of about an acre; inclosures of severalty lands, 160, containing 504 acres. The maps in the Appendix to the Commissioners' Report show clearly the extent and nature of this curious intermixture of interests.

² Eighty years ago a simpler form of the open field system, under the name of "run-rig," survived here and there all over Scotland. Traces of it exist in the Highlands, and there are well-known remains of its strips and balks in Wales. The run-rig system is still prevalent in some parts of Ireland. (Seebohm, p. 15.) Dr. John Smith, in his "View of the Agriculture of

Natural
fertility of
open arable
lands.

Their unpro-
ductiveness.

Inclosure
necessary to
improve
agriculture.

to which those Acts in turn applied. Warned, no doubt, by the serious disorders which followed the inclosures made after the Reformation, Parliament was at first careful to interfere as little as possible with common rights, and expressly exempted all wastes which were open to commoners throughout the year. It also chose to proceed, not, as hitherto, by general legislation, but by private bills, introduced upon petitions which pointed out the hindrances to cultivation existing in particular districts.

The first Inclosure Act was sanctioned in 1606-7.¹ It applied to certain manors, lordships and parishes in Herefordshire—Marden, Boden, Wellington, and others. There the preamble described husbandmen as much distressed, because, their fields and meadows being open after sickle and scythe, “all sorts of people turn in their cattle, and within very short space eat up all the grass thereof, so that the oxen and kine of the husbandman are in danger to starve in summer, and of necessity in many places must be sold away for want of wintering meat.” For remedy of this complaint, the Act allowed each owner and farmer to inclose and keep in severalty, freed from rights of common, as much land as, when added to his then existing severalty holding, would make up a clear third part of his entire holding. The other two parts were to continue subject to the same uses and custom as before. Ancient waste and commons open all the year were not to be affected. What appear from their

First Inclosure Act, 1606-7.

Stock-raising hindered on commonable land.

Argyleshire,” published in 1805, remarks (p. 31) upon the obstacles to improvement presented by tenancies in run-rig, “which is nearly the same as in common.” The dwellings of these small holders were set together, he says, so that they might unite in self-defence, if any raids were made upon their property. The Duke of Argyle had, it seems, for a considerable time been changing the run-rig system on his estates by giving each tenant a severalty holding, and

removing houses and buildings to the land with which they were connected. Other landlords had begun to follow this example (p. 69), so that the change appears to have been made in Scotland without special legislation. This might well be, since there were few small freeholds, and rights of common after harvest were probably restricted to holders of commonable land.

¹ 4 Jac. I, c. 11..

description to be Lammas lands were also exempted. Moreover, if persons inclosed under the Act, their rights of common in the commonable fields and pastures were to abate in proportion. In other words, if they took from the common stock, their share in what was left suffered accordingly.

Rural
parishes, 17th
century.

This measure is remarkable for extreme caution, lest it should bring about any undue encroachment upon common rights. No attempt is made to re-apportion intermixed properties, and little is done towards the promotion of good husbandry. It probably illustrates, however, with sufficient accuracy, the condition of most rural parishes early in the seventeenth century. First, a proportion of land, both pasture and arable, but only, it would appear, a small proportion, was farmed in severalty, not being commonable. Much more than two-thirds of each holding consisted of open fields, commonable "after sickle and scythe." It may be assumed from the terms of the statute that varying customs as to the period or other incidents of commoning applied to these open fields. As in other cases, we may also assume the ordinary mingling of properties and consequent inconvenience in cultivating them. Then there was the waste or common, open all the year round, and, according to nearly universal testimony in more recent times, harbouring sheep-stealers, poachers, squatters and idlers, and often doing much more harm than good in a parish.¹

Social effect
of commons.

A private statute of 1664² confirmed the inclosure and improvement of Malvern Chase; and with a view to the growth and preservation of timber for ship and house building, Parliament set apart, amongst other forests, portions of the forest of Dean, and two thousand acres in the New

¹ This is a mild way of putting much evidence given by competent witnesses in 1844. According to them, commons as a rule encouraged idleness, produced ill-feeling and sometimes violence when commoners drove off each others' stock, har-

boured disease among cattle, made poor, sour pasture for want of drainage, gave no profitable employment to anybody, and were a nuisance instead of a boon in many parishes.

² 16 Car. II. c. 8.

Forest, to be held in severalty for this purpose.¹ But more than a hundred years passed before the example set in Herefordshire was followed by holders of land elsewhere. Even then the reign of Anne only produced two inclosures: one, in 1709, for Ropley Commons, in Hants, "and for improving the old disparked park of Farnham," in Surrey and Hants;² the other in 1713, "for parting and inclosing two great open common fields, and a large open greensward Common Down," in the manor and parish of Thormarton, alias Farmington, Gloucester.³ In the reign of George I. sixteen inclosures were sanctioned; the next reign produced 226; under George III. the number rose to 3,360; in the ten years of the succeeding reign it fell again to 220.⁴

Inclosures in
18th century.

Only a small proportion of these Acts were printed.⁵ It is easy, however, from their titles, and from the petitions for each bill, preserved in the journals of Parliament, to gather their general scope. We find, then, as might have been expected from the rude conditions of agriculture already described, that the partition and inclosure of open and commonable fields had even more to do with the promotion of such bills than a wish to appropriate commons. Of thirty-four inclosures authorized in the year 1760, only six apply exclusively to wastes; the rest are either for dividing and inclosing open fields and commonable lands only,⁶ or include both open fields and wastes. Towards the end of the eighteenth century, there was an increase in the proportion

Partition of
open fields,
the main ob-
ject of Inclo-
sure Acts.

¹ 35 Hen. VIII. c. 17; 20 Car. II. c. 3 (as to the forest of Dean); 9 & 10 Will. III. (as to the New Forest). See also 29 Geo. II. c. 36, and 31 Geo. II. c. 41, authorizing, by consent, the inclosure of parts of any commons, in order to plant and preserve trees fit for timber and under-wood.

² 8 Anne, c. 6.

³ 13 Anne, c. 7.

⁴ Committee on Inclosures, 1797; *post*, p. 25; and see App. B. No. II.

⁵ That is, in the Statute-book. Many were printed privately by the parties, but are very difficult of access.

⁶ *E.g.*, an Act (33 Geo. II. c. 5) for dividing and inclosing the open and common fields, common meadows, common pastures, common grounds, and commonable lands within the parish, township and liberties of Sulgrave, in the county of Northampton.

of commons brought into cultivation. Taking, however, hap-hazard, the year 1801, open and common fields, either alone or jointly with wastes, are the main objects of legislation in more than three-fourths of the inclosures then sanctioned. We must remember, therefore, that of the four thousand Acts and upwards, so often mentioned in proof of the wholesale taking of commons, many did not apply to commons at all, while the greater number only dealt with them as part of a still more pressing and necessary measure, the division and discharge from commonable rights of intermixed open fields, which were then held in severalty.

Absolute
ownership
substituted
for common
interests in
land.

This legislation released English agriculture from bonds which had long crippled its growth and limited production; and, perhaps, at no period of English history were social changes so vital brought about by the intervention of Parliament. Modified by custom and by law, the effect of feudal tenure had gradually been to confer on rural communities in this country limited rights in the greater part of the soil. Absolute ownership was an exception. Land, whether cultivated or waste, was held, in part, for the common good. By inclosures privately authorized, and by general legislation in aid of them, these rights of the community were to a large extent extinguished, and exclusive rights in the soil given to individuals. It was the substitution over the whole country of individual interests in place of common interests, as a means of furthering agriculture at a period when increased production was sorely needed. Like most other revolutions, this had an unfavourable side. It is true that the rights of the community over commonable lands as well as over wastes were often of little practical value. It is also clear that, as long as these rights existed, cultivation must be hindered, and the land could not bring forth its due increase.¹ On the other hand, it is not clear that proper equivalents were

¹ Besides increasing the growth of cereals, inclosures were credited, no doubt truly, with a large increase, both in the number of stock sent to

market, and in their weight. In proof of the latter position, the following curious returns of Smithfield Market, showing the average weight

given for the rights thus taken away;¹ and advocates of agrarian reform may derive some of their strongest arguments from the common property once existing in the soil, and the changes wrought by inclosures.

In 1773, a public statute provided for the inclosure of wastes and commons, under conditions, but aimed chiefly "to promote the growth of corn,"² by improving the course of husbandry in open fields. For this purpose, occupiers of severalty holdings were to appoint a field master, or field reeve, to superintend the cultivation of the various parcels, "in such course of husbandry" as might be agreed; but the rules so adopted were not to continue in force for any longer term than six years, or two "rounds," according to the ancient and established course in each parish. It is a curious picture of the joint and several agriculture which was possible in English parishes a hundred years ago; settled according to pattern by a majority of occupiers, like affairs in the vestry; and carried out under the supervision of an elected officer, perhaps the parish clerk or senior churchwarden.

A brief reference to three other public statutes is necessary, in order to fill in this rough sketch of the legislation affecting inclosures. In 1801, an Act, generally associated with the name of Sir J. Sinclair,³ set forth the provisions to be thenceforth adopted, by reference, in private Inclosure Acts.

¹³ Geo. III. c. 81.

Sir J. Sinclair's Act, 1801.

of stock sold there, are given in Dr. Clarke's Survey of Great Britain, published in 1801:—

	<i>Ox</i>	<i>Calf</i>	<i>Sheep</i>	<i>Lamb.</i>
In 1710 ..	370 ..	50 ..	28 ..	18 lbs.
„ 1796 ..	800 ..	148 ..	80 ..	50 lbs.

¹ It must, however, be borne in mind that these common rights depended, strictly, in almost all cases upon the ownership of land or houses in the parish. The 13 Geo. III. c. 81 (cited *supra*), for improving the cultivation of open or common fields, allowed severalty holders to put an end to rights of common upon setting apart from common fields an equiva-

lent area for the exclusive use of cottagers and others entitled. It also allowed the ploughing-up of "balks, glades or meers," which "do often lie very inconveniently interspersed among the arable lands in common fields;" but other common land was to be substituted for the area so brought into tillage. Parliament evidently intended to protect the rights of commoners, but provided no effectual machinery for that purpose.

² Preamble to 13 Geo. III. c. 81.

³ 41 Geo. III. c. 109, supplemented by 1 & 2 Geo. IV. c. 23.

This statute did not dispense with the necessity for applications to Parliament in each case when inclosures were sought; but it abridged the length of private Bills, made their provisions clear and uniform, and in the history of private legislation is memorable as the first Consolidation Act.

Common
Fields In-
closure Act,
1836.

Another statute, passed in 1836,¹ had for its object "the improved cultivation of open and common, arable, meadow and pasture lands and fields now intermixed," and provided that, in any parish, these lands, including the untilled balks in arable fields, might be divided and inclosed, with consent of two-thirds of the proprietors in number and value, without the expense of an application to Parliament. This Act applied to commonable lands only, and a considerable extent of these lands was divided and inclosed under its provisions. In parts, however, it was defective, for it required assents which frequently could not be obtained, and it gave no power to allot hedge-greens, worple-ways, and pieces of waste which often lay intermixed with the commonable land.²

General In-
closure Act,
1845.

The last general Act to which we need here refer is that passed in 1845,³ "to facilitate the inclosure and improvement of commons and other lands now subject to rights of property which obstruct cultivation, and the productive employment of labour." Another object was to promote the division and exchange of intermixed lands. Commissioners were appointed to investigate each case. At first, in the case of commonable lands, subject to several ownership, the Commissioners were authorized to sanction inclosures without the intervention of Parliament; but the exercise of quasi-legislative powers by any other body, even though appointed by Parliament itself, is sure in time to arouse a natural and wholesome jealousy in Parliament;

¹ 6 & 7 Will. IV. c. 115; and see 3 & 4 Vict. c. 31.

² Commons Committee of 1844, Minutes of Evidence, p. 363. Wor-

ple-ways were the occupation roads leading to and through the common fields.

³ 8 & 9 Vict. c. 118.

and in 1852, statutory powers were made necessary for all inclosures whatever under the Act of 1845, and its many successors.¹

A question naturally occurs—what has been the practical effect of this long series of measures, public and private, begun six hundred and fifty years ago, and not even yet exhausted? The area of land taken from wastes and “approved” by lords of manors, under the statutes of Merton and Westminster, cannot even be approximately estimated. But judging from the wide extent of open and common fields and meadows in the beginning of the eighteenth century, it may be stated with confidence that such improvements rarely conferred exclusive rights in the land; that, in effect, they did no more than convert common into commonable land. Later inclosures, as we have seen, went much farther; and when they were brought about by private Acts, we, for the first time, obtain some records of the acreage so disposed of. In 1797, a Committee of the House of Commons on waste lands gave the following table of inclosures sanctioned in about a century, with the extent of land inclosed:—

Effect of inclosures.

Acres inclosed, 1702-96.

<i>Reigns.</i>	<i>No. of Acts.</i>	<i>No. of Acres.</i>
Anne	2	1,439
George I.	16	17,660
George II.	226	318,778
George III.	1,532	2,804,197
		<u>3,142,074</u>

The only other information on this point is contained in a Parliamentary Return of 1843,² which specifies all Inclosure Acts passed since the year 1800. Unfortunately this return is imperfect on two heads, as to which precise details would have been useful. What the House of Commons asked for was information confined to commons and waste lands not held in severalty. But the return does not distinguish between Acts referring solely to commons and wastes, and Acts com-

¹ 15 & 16 Vict. c. 79.

² Commons Return, 325 (1843).
See also *post*, App. B., No. II.

prising commonable lands held in severalty; all Inclosure Acts passed since 1800 are given indiscriminately. The House of Commons also asked to be furnished with "the estimated number of acres" inclosed in each case. These particulars, again, could not be supplied, because out of 1,996 inclosures sanctioned between the years 1800 and 1842, the area in 634 cases was not stated in the Acts.¹ We can only, therefore, make an approximate estimate by assuming that the average area of each inclosure was the same. In this way, taking into account the return of 1797, and later information, it appears that between the years 1702 and 1876 the area of land inclosed in England and Wales was not far short of seven millions of acres, or nearly one-fifth the whole acreage, cultivated and waste.²

Total area
inclosed,
1702-1876.

¹ In Appendix B., No. II., will be found a list of all inclosures since 1800 in Surrey and Middlesex, and also of any inclosures in other counties where the area exceeded 5,000 acres.

² See Appendix, ib. As no totals of acreage are given in the return of 1843 the figures have involved a laborious calculation. Lord Macaulay (History, c. 3) says, but without citing authorities, that the area inclosed under the authority of the four thousand Inclosure Acts "exceeds, on a moderate calculation, ten thousand square miles." This would be 6,400,000 acres, a result substantially agreeing with that come to in the Appendix, which extends over a somewhat longer period. "How many square miles which formerly lay waste have, during the same period, been fenced and carefully tilled by the proprietors without any application to the Legislature, can only be conjectured. But it seems highly probable that a fourth part of England has been, in the course of little more than a century, turned from a wild into a

garden." In 1685 the arable and pasture land was not supposed to amount to much more than half the area of the kingdom (37,319,000 acres). Lord Macaulay does not mention the open field system of cultivation which was then general, and his vivid description of the extent of uninclosed country in the seventeenth century must be taken subject to this reservation:—"From Abingdon to Gloucester, a distance of forty or fifty miles, there was not a single inclosure, and scarcely one between Biggleswade and Lincoln. At Enfield, hardly out of sight of the smoke of the capital, was a region of five-and-twenty miles in circumference, which contained only three houses and scarcely any inclosed fields. Deer, as free as in an American forest, wandered there by thousands. The red deer was then as common in Gloucestershire and Hampshire as they now are among the Grampian Hills." (History, c. 3.) The open and common fields would account adequately for the fact also mentioned that "in the drawings of English landscapes, made in that age for

All these inclosures were the result of private legislation; we can form no estimate of the extent of land inclosed under the authority of general Acts, or without any authority. Again, however, we must bear in mind that the land thus inclosed was not wholly common land taken from the waste of the manor, and for the first time brought into cultivation, but included a large proportion of arable and pasture land, owned by individuals, though subject to common rights for certain periods of the year.¹

Since the Commons Act, 1876, when Parliament imposed more stringent conditions upon inclosures, the number sanctioned has been small. But between 1845 and 1876, 600,000 acres of common and commonable lands, an area exceeding that in each of seventeen English counties, was thus redeemed from common and waste, and divided among 26,000 separate proprietors, "a far larger and more varied body of landowners than that of any county in England."² The total estimated value of the wastes inclosed during this period amounts to 6,140,000Z.³ The extent of common lands still

Area inclosed,
1845-76.

the Grand Duke Cosmo, scarce a hedgerow is to be seen, and numerous tracts, now rich with cultivation, appear as bare as Salisbury Plain."

¹ The two descriptions of land inclosed were not distinguished even after the appointment of the Commissioners in 1845. A return made by them in 1869 stated that out of 614,800 acres inclosed since 1845, three-fifths, or 368,000 acres, might "be assumed" to be waste of a manor, or subject to rights of common not limited by number or stints; but this assumption is "merely a rough estimate," for the Commissioners "appear to have kept no separate account." (Commons Committee of 1869 on Inclosure Act, 1845; Report, p. 3.) Under the Act of 1845, allotments for the labouring poor and for purposes of recreation could only be made out of waste inclosed, not out of common fields.

The Commons Act, 1876 (39 & 40 Vict. c. 56), gave further effect to the legislation of 1845 as to allotments for recreation grounds and field gardens. See also 2 Will. IV. c. 42, and Allotment Extensions Act, 1882 (45 & 46 Vict. c. 80).

² By another process, however, during the same period of thirty years, the agricultural area of the country has been reduced by more than the extent thus acquired for production, for 489,000 acres have been absorbed by towns and 200,000 acres by railways, together nearly 700,000 acres. (Report of Inclosure Commissioners, 1876, given *post*, App. B., No. III.)

³ Thirty-second Annual Report of Inclosure Commissioners, 1877; *post*, App. B., No. IV., where will be found an attempt to classify the owners among whom these small properties have been distributed.

uninclosed, in England and Wales, was estimated in 1874 at 2,632,000 acres. This included 264,000 acres of open and common fields. Reckoning these fields, it was supposed that more than a million acres were still available for improvement, or "apparently cultivable," while a million and a-half of acres were "unsuited to cultivation."¹

Town Im-
provement
Acts.

While the country was thus cared for, if not always by wise, at least by abundant legislation, the growing population and importance of towns required attention at a still earlier period. Of any provision for sewerage there is little or no trace until the latter part of the seventeenth century. Paving was the first and most frequent subject of local legislation; and by universal testimony it was badly needed. The early method of mending streets in London and Westminster was to make each owner repair in front of his property or dwelling "up to the channel running in the middle of the street."²

Paving of
streets.

Calais.

Outside the metropolis, one of the first Improvement Acts in the statute book applies to Calais, where, in 1548, the streets were "foul, ruinous and noisome," "full of pits and slowes" (sloughs), and dangerous to passers by. The mayor and aldermen were therefore required to pave the four high streets; but owners were responsible in other parts of the town, and were subject to penalties upon default. The Corporation, too, were supposed to be capable of neglecting their share of this work; if they did, they were to be fined by the lord deputy.³ The paving was meant to be at the cost of owners only. Lessees and occupiers might therefore "abate and retain" so much of the rent as they had

¹ Thirty-first Annual Report, ib. 3; and see App. B., No. III.

² In London "the pavement was detestable, all foreigners cried shame on it. The drainage was so bad that in rainy weather the gutters soon became torrents. . . . Till the last year of the reign of Charles II. most of the streets were left in profound darkness. . . . The machinery for keeping the peace was utterly contemptible. There was an act of

Common Council which provided that more than a thousand watchmen should be constantly on the alert in the city, from sunset to sunrise, and that every inhabitant should take his turn of duty. But the Act was negligently executed. Few of those who were summoned left their homes." (Macaulay's History, c. 3.)

³ 2 & 3 Edw. VI. c. 38; *post*, Chap. "Local Authorities."

spent in paving. Default was to be presumed on presentment by the verdict of twelve indifferent men, or by three sufficient witnesses. To diminish the liability of fire, a period was limited after which, instead of thatch of straw or reed, all houses were to be roofed with tiles or slates. Other local Acts in England followed the same lines.

Restrictions on the number of taverns in certain specified towns are met with in 1552-3, where there is a recital that taverns had become a common resort for "mis-ruled persons," and had been "of late newly set up in very great number in back lanes, corners, and suspicious places." They were forbidden, therefore, except in cities and towns, upon licences granted by the municipalities. Care was also taken that such licences should be granted only with due form and solemnity, under the common seal; and they might be revoked at pleasure. The allotment of taverns to particular towns is curious.¹ Taverns restricted.

Among nuisances less excusable were the killing of cattle and the scalding of swine in towns. A petition in 1488-9, from "your poor subjects and orators," parishioners of St. Faith's and St. Gregory's, in the city of London, tells a pitiful story of "corrupt airs engendered" there from this cause, to the grievous harm of many citizens "of right honest behaviour," but, above all, to "the jeopardous abiding" of the king's most royal person, when he came to the cathedral. For the space of sixteen years, complaints had been continually made by citizens, and by canons and petty canons of the cathedral, "unto divers mayors and aldermen," and no remedy had been found. Happily, the petitioners did not apply to Parliament in vain; the nuisance was prohibited,² though under penalties which seem too moderate, even allowing for the higher value of money three hundred and fifty years ago. Killing cattle in towns.

In the reign of Henry VIII. a series of Acts passed giving remarkable powers to municipal authorities. The wars of Rebuilding ancient mansions in towns.

¹ 7 Edw. VI. c. 5; *post*, Chap.

² 4 Hen. VII. c. 3.

"Local Authorities."

succession had probably led to some confusion of ownership in towns. Country gentlemen, too, had become unwilling, or through want of means unable, to maintain their ancient residences in the chief provincial centres.¹ The result was, in the year 1540, "that many beautiful houses of habitation" had "fallen down decayed, and at this day . . . do lie as desolate and vacant ground;" while other houses were feeble and like to fall, and pits, cellars and vaults were uncovered and dangerous.² It is a sad picture of the disaster and ruin which war and confiscation had brought upon so many well-to-do English families during the troubles of the fifteenth century. Municipalities complained with reason that these ruined mansions were "a hindrance and impoverishment" to them; that the abandoned sites became no man's land, disturbing to the peace of the community. Parliament listened to these representations, and prescribed a certain period within which owners should restore their houses. In their default, the lords of whom the land was holden were allowed a further time to do so. If they, too, failed, local authorities might enter and do all necessary works. Every considerable provincial town in England was thus dealt with.

Municipalities authorized to rebuild.

Iron works in Sussex.

Were there no other sources to draw upon, local statutes would supply in general outline no inadequate picture of the rise of provincial towns in population, wealth and influence, as well as of the gradual transfer of industries

¹ In that age, still more rarely than in the later times mentioned by Macaulay, a country gentleman did not take his family to London. "The county town was his metropolis. He sometimes made it his residence during part of the year. At all events, he was often attracted thither by business and pleasure, by assizes, quarter sessions, elections, musters of militia, festivals and races. There were the halls in which the judges, robed in scarlet and escorted by javelins and trumpets, opened the king's commission twice a year.

There were the markets at which the corn, the cattle, the wool, and the hops of the surrounding country were exposed to sale. There were the great fairs to which merchants came from London, and where the rural dealer laid in his annual stores of sugar, stationery, cutlery and muslin. There were the shops at which the best families of the neighbourhood bought grocery and millinery." (History, c. 3.)

² 27 Hen. VIII. c. 1; 32 Hen. VIII. c. 18; 33 Hen. VIII. c. 36; and see *post*, Chap. "Local Authorities."

from southern to northern counties. In Sussex, Kent and Surrey a prosperous business was carried on from very early times in the smelting of iron ore and its manufacture. In 1548 no less a personage than Lord Seymour owned iron works in the forest of Worth, in Sussex; and southern foundries at a later period furnished the ships of Drake, Hawkins and Frobisher with the cannon and the shot which they used so well. In 1653 there were forty-two forges and twenty-seven furnaces in the Weald of Sussex.¹ But the iron mills, as they were called, suffered frequent discouragement from Parliament. They were stinted of fuel, on the ground that they destroyed the growth of timber. Their owners were hardly treated, because the heavy traffic to and from their mills injured the roads. In 1580-1 the Legislature went much further, by providing that no new iron-works should be established within twenty-two miles of London, "or within four miles of the hills called the Downs, between Arundel and Pevensey, or of Pevensey, Winchilsea, Hastings and Rye."² Finally, it was enacted, under heavy

¹ "Sussex was then the Wales and the Warwickshire of England. Foreign countries sought eagerly for its cannon, its culverines and falconets. Its richly decorated firebacks and fantastic andirons were the pride of lordly mansions. London sent here for the railings that went round its great cathedral; Sussex ploughshares, spuds, and other agricultural implements and hardware were sent all over the kingdom." *Glimpses of Our Ancestors in Sussex*, p. 64; where also is quoted, from the inventory taken of property belonging to the Lord High Admiral Seymour when impeached in 1549, an account of certain furnaces and forges possessed by him at Worth, with the number of workpeople, "founders, flylers, coleyers, miners, gon-founders," &c. The works in-

clude:—"Ffyrste, a duble ffurnace to cast ordynaunce, shotte or rawe iron, with all implements and necessities apperteyning unto the same. Item, there ys in sowes of rawe iron, cxij. Item, certain pieces of ordynaunce, that is to say, culverens, xiv.; demi culverens, xv. Item, of shotte for the same, vi. tone, v. cwt. Item, ordynaunce carried from thence to Southwarke and remayneth there as folet: sakers, xv., ffawkons, vj., mynnnyons, ij., and dim. culverens, j. Item, in shotte for the same, xiiij. tonne. Item, in myne or ower at the furnace, redye receved, xvjc. lode. Item, in myne, drawen and caried, Mixx. lode. Item, in whode, viiijc. corde." The last of the Sussex iron works, at Ashburnham, was closed in 1807.

² 23 Eliz. c. 5.

penalties, "that no new iron mill, furnace, finery, forge or bloomery" should be erected within the three counties except upon land already so occupied, or able to furnish of itself a sufficient supply of fuel.¹

Cloth manu-
facture in
Kent, &c.

No greater encouragement was given to the manufacture of cloth, which was followed with some success in the home counties, where fuel was plentiful. An Act of 1566² prohibited the export of cloth made in the counties of Kent and Suffolk, unless it was wrought and dressed. The Act was well intended, and was passed, as the preamble declares, "at the most humble suit," and "for the better employment and relief," of "great multitudes" of the Queen's subjects "using the art and labour of cloth working;" but it did more harm than good to this southern industry. In the districts in which they existed, gigge-mills³ seem to have been in no greater favour than iron works. Bills for the removal of both were not uncommon, as though they were public nuisances; and one of the earliest recorded instances of the employment of counsel in the House of Commons is against a Bill promoted in 1562, apparently by the Corporation of Guildford, to put down an iron mill near that town, when the learned Plowden, one of the worthies of the Middle Temple, appeared at the bar for the mill-owner with Mr. Serjeant Harper, "showing great reasons why the Bill might be rejected."⁴

Manchester.

At the same period, Manchester had some reason for complaint. In 1549 a Bill for a water conduit in that town was passed by the House of Commons,⁵ and was read a first time in the Upper House, but did not receive the Royal Assent,

¹ 27 Eliz. c. 19; 39 Eliz. c. 19. See also 1 Eliz. c. 15, forbidding the use of oak or other timber trees for fuel in iron works within a certain distance of the sea and of certain rivers, including the Thames, with a view, no doubt, of reserving such timber for ship-building. This Act, passed in 1558-9, excepts iron-works in the

county of Sussex, the Weald of Kent, and parishes of Charlwood, Newdigate and Lighe in Surrey. In its later legislation Parliament was not so forbearing.

² 8 Eliz. c. 6.

³ For the teasing of cloth.

⁴ 1 Com. Journals, January, 1562.

⁵ 1 Com. J., p. 16.

as Parliament was prorogued a few days afterwards.¹ A bill "to repeal a statute against Manchester cottons" failed to pass the House of Commons in 1562-3.² The journals of Parliament afford no further information as to the objects of either bill, or the reasons why both were unsuccessful. It was not till 1759 that, upon making "proper recompense" for vested interests, Manchester was freed³ from the ancient feudal custom which required its inhabitants to grind their corn at certain water-mills, to swell the manorial revenue. When, in 1775, Parliament vested in James Watt "the sole use and property of certain steam-engines, commonly called fire-engines, of his invention,"⁴ it was plain that southern England, depending upon its forests for fuel, must see its manufactures gradually supplanted by districts which Nature had provided with boundless stores of latent heat and force.

The inventions of Arkwright, of Hargreaves and Crompton, about this time, all tended to increase wealth and population in Lancashire and Yorkshire, whose manufacturers could now afford to smile at the feeble legislation which 200 years before was vainly sought in aid of Manchester cottons. The rise of the iron manufactures in Wales and Staffordshire, the processes which Wedgewood perfected, and the art he developed in the Potteries, again had no corresponding material successes in the south, where, apart from London, old industries decayed, and population dwindled or remained stationary. Something had been done at this time, as we have seen, to improve roads in all parts of the kingdom, and to make rivers more easily navigable. But manufacturing enterprise in the north of England was still cramped from want of better and cheaper means of transit, especially for heavy goods. By help from Parliament these means were now to be supplied.

Increase of
wealth and
population in
the north.

By what seems an easy transition from the river im- Canals.

¹ 1 Lords' J., p. 387.

³ By 32 Geo. II. c. 61.

² 1 Com. J., p. 68.

⁴ 15 Geo. III. c. 61.

provements already noticed, though separated from the first River Improvement Act by an interval of nearly 200 years, we come to canals, which were meant as substitutes for rivers, or to supersede them; to the engineer who was taunted for building in the air;¹ and the Duke who lived on 400*l.* a year, that he might venture his fortune in a great commercial enterprise. The Bridgewater canals,² though not absolutely first in date, were daring experiments both in engineering and finance; but, perhaps, their chief interest now is, that the scheme from Longford Bridge to Runcorn, there joining the Mersey, first raised in Parliament the question of competition with existing statutory undertakings. Not even the battles of the gauges, or any of the great territorial struggles between our most powerful railway companies, were more hotly contested than the Duke of Bridgewater's attack in 1761-2 upon the monopoly of the Mersey and Irwell navigation.

Competition
with river
navigations.

Procedure on
private bills,
1761-2.

A summary of the various stages of the Duke's bill, taken from the journals of Parliament, will show how cumbersome and slow was the procedure upon private bills a century and a quarter ago. The Duke's petition for a bill was read in the House of Commons on November 14, 1761.³ It was referred to a Committee of forty-one members specially

¹ According to the accepted story, Brindley's plan for an aqueduct carrying the canal and the ships navigating it thirty-nine feet above the river Irwell was submitted to an engineer, who, after visiting the site, said:—"I have often heard of castles in the air, but never before was shown where any one of them was to be erected." Nevertheless, the Duke of Bridgewater did not cease to trust the self-taught millwright; and the Barton aqueduct spanned the Irwell without mishap, carrying barges high above the masts of vessels in the river.

² An Act to make the Worsley brook navigable into the Irwell passed in 1737; but these powers lapsed. The canal, which brought the duke's coals from Worsley to Manchester, was constructed under Acts passed without opposition in 1759-61. For the water-way to Runcorn, connecting Liverpool and Manchester, the duke obtained the sanction of Parliament in 1762.

³ 29 Com. J., p. 15 *et seq.* Petitions for and against private bills appear to have been then read to the House at length.

named, together with all the members for the four counties of Lancaster, Chester, Stafford and Salop, and for the Principality. As though such a Committee was not numerous enough, eleven more members were added subsequently. On November 26, the Committee reported that they had heard evidence in support of the petition, and had come to a decision in its favour. This report, according to the usual practice, was read to the House twice, by the member who fathered the bill and by the clerk at the table. Leave was then given to introduce the bill. It was brought in on December 18, read a first and second time, and referred to a Committee of seventy-six members specially named, together with the members for the counties of Lancaster, Chester and Stafford.

Committee on
petition in
Commons.

Report.

Bill brought
in and com-
mitted.

The House did not adjourn for the Christmas holidays until December 23, meeting again on January 19, 1762. On the day following, and again on January 23 and subsequent days, opposing petitions were presented and read to the House. The chief opponents, proprietors of the Mersey and Irwell Navigation, claimed that they had spent "£18,000 and upwards" in improving the navigation, and alleged that "great part of their respective fortunes" was at stake, praying to be heard by counsel before the Committee. Accordingly the House directed the Committee to hear these and other petitioners, and also to "admit counsel to be heard at the same time" on behalf of the bill. There were nine opposing petitions: five from landowners whose property would be taken or injuriously affected; one from traders of Warrington, interested in the navigation between that town and Manchester, who complained that streams now flowing into the Irwell between those points would be diverted for the purposes of the canal, and navigation would thereby be stopped during the summer season; another from traders and others of Manchester who were of opinion that the Mersey and Irwell navigation was "sufficient to perform all the carriage required." On the

Hostile peti-
tions.

other hand three petitions from traders and others in Manchester, Liverpool, Stockport and other places set forth the advantages which would arise to trade from the proposed extension of the canal to the Mersey below Warrington, especially as the Duke had undertaken the conveyance of goods and minerals upon the new water-way without charging any higher rate than that authorized upon his existing canals, namely, a maximum rate of half-a-crown per ton.

Rehearing
by House.

With a view apparently to secure a rehearing of the case before the whole House after its adjudication by the Committee, certain petitions for and against the bill were ordered to lie on the table, until the Committee reported; and counsel were then to appear at the bar if the petitioners thought fit.¹ On February 5, a day was appointed for receiving the Committee's report, and the House also ordered that counsel should be then heard. At the usual time of meeting, nine a.m., the Committee's report was considered, the House having previously resolved to continue the discussion after two o'clock, the hour then fixed for laying aside private, and proceeding with public business. The report was again favourable to the bill. Counsel had been heard for opponents as well as promoters; the Committee had "examined the allegations of the bill and found the same to be true;" and they now returned the bill to the House with certain amendments. Then counsel and the parties were called in; the Committee's report was read for their information, together with the reserved petitions; and the real struggle began. That before the Committee had been but a preliminary skirmish.

Effect of
reading bill a
second time.

In and before the year 1762, the second reading of a private as of a public bill seems to have been regarded as at least a qualified approval of principle.² The subsequent reference to a Committee was chiefly with a view to the examination of details, not preamble, though there were obvious methods of defeating the bill, by delay or by striking out a vital clause. Conformably with this practice, the burden of proof in Com-

¹ 29 Com. J., Feb. 3, 1762.

² See *post*, Chapter on Procedure.

mittee rested, not, as now, with promoters, but with petitioners, who therefore opened their case and submitted evidence before the promoters were called on. Such was the course followed both in Committee and at the bar of the House of Commons in dealing with the Duke of Bridgwater's Canal Bill in 1762. Parts of five days were occupied with arguments and evidence, the proceedings beginning after the House had disposed of other business, but being generally protracted until seven o'clock, then the fixed hour of adjournment. The temper of the House may be judged from the fact that there was a division upon a motion that one of the witnesses for the bill "be allowed to be asked further questions touching the expense of the former navigation made by the Duke of Bridgwater," when it was resolved in the negative by 120 votes to 73.

Counsel and
evidence
heard in
House.

Counsel for the bill summed up their evidence on Feb. 26. Two counsel, one representing the Mersey and Irwell navigation, the other the landowners, were then heard "by way of reply."¹ Comparing the practice with that of to-day, the positions of the parties were, therefore, exactly reversed, the petitioners having the last word. Then the parties were directed to withdraw, and the House divided on a motion "that the amendments made by the Committee to the bill be read a second time," which was carried by 127 to 98 votes. On March 4, the amendments made by the Committee were further discussed and three divisions were taken, all in favour of the bill. An adjournment was moved and negatived, but at length agreed to. On the next day the remaining amendments were disposed of, and the bill was ordered to be ingrossed. It had still to undergo a severe ordeal. On March 8, both sides rallied their forces for a last battle, and the bill only passed by a narrow majority of 133 to 114 votes; a signal proof of the vigour and tenacity with which vested interests were then able to defend themselves in Parliament.²

Debates and
divisions in
House.

¹ 29 Com. J., Feb. 26, 1762.

² Mr. Smiles says one of the de-

bates lasted eight hours, and one witness was under cross-examination

Bill in the
Lords.

In the House of Lords the bill had an easy time. The Duke of Bridgwater and his brother-in-law, Earl Gower, were appointed upon the Committee, personal interest being then no disqualification for such service; and there is no record of division or debate.¹ The men who had been the benefactors of their day by improving river navigation were now thoroughly beaten. They might have been somewhat consoled had they known that the projectors of the new waterways were in their turn to suffer from a competition still more formidable and ruinous.

Rival canal
schemes.

Besides the issues of competition and interference with vested interests, canal legislation first brought prominently before Parliament the rivalry of engineers and projectors, and their efforts to gain possession of districts or to keep out intruders. The success of the Bridgwater canals not only as works of engineering, but as remunerative investments for capital, led to many imitators. Backed by Earl Gower, the Earl of Stamford, the Duke of Bridgwater, Josiah Wedgwood and many other landowners and manufacturers, Brindley planned the Grand Trunk Canal for uniting the Mersey, the Trent and the Severn, and thus providing a connected system

Grand Trunk,
or Trent and
Mersey Canal.

four hours and a half. He gives ("Lives of the Engineers," I. 376) some amusing extracts from Brindley's diary:—"Ad a grate division of 127 for t' Duk; 98 Nos; for t' Duk 29 Me Jorete." And again:—"4 March, ade bate at the Hous with grate vigor 3 divisions the Duk carred by Numbers evory time a 4 division moved but Noos yielded." And on another day the House "wont thro the closos." Party feeling seems to have run high for and against the bill. The Earl of Derby's son, Lord Strange, a representative of Lancashire, led the opposition of the "old navigators," as they were called, and mustered the Tories in aid; while the Duke and his friends, being Whigs, had the

support of that party. As Brindley put it, "the Toores mad had [made head] agane ye Duk." (Ib. 372.)

¹ 30 Lords' Journals. In Brindley's words, the bill passed the other House "without opposishun." This untutored genius, whose powers of invention and adaptation, and engineering skill have never been surpassed even among English engineers, received for his highest wage from the Duke of Bridgwater three and sixpence a day while carrying out these great works, and for the greater part of the time only half-a-crown. His personal expenses were on the same modest scale. The canal which he planned and executed came to yield an income of 80,000*l.* a year. (Smiles, *ib.* 402.)

of transit for goods between the west and east coasts, between the Humber ports on the one side, and Liverpool and the British Channel ports on the other.

So bold a scheme was sure to threaten existing interests, as well as to arouse local jealousies by the course it took, and the country it omitted to accommodate. Cheshire thought itself neglected in comparison with Staffordshire and the Pottery districts. The River Weaver Navigation Trust found their revenue in danger, and headed a formidable opposition. A tunnel 2,880 yards long,¹ sometimes burrowing 200 feet below the surface through unknown strata, was supposed in itself to be an audacious proposal sufficient to wreck the whole scheme; and this was one of several such works, to say nothing of 76 locks, and nearly 170 aqueducts, large and small. The engineering was condemned, the estimates were pulled to pieces, and alternative schemes suggested. Parliament was appealed to, both on sentimental and utilitarian grounds,—because the country would be disfigured; because, as Dr. Johnson complained, canals would interfere with country seclusion, and make living dear where it used to be cheap, by taking rural produce to crowded centres; because they would displace the pack-horses and waggons which had hitherto served for transport across country;² lastly, because they would injure the trade of towns if carried through or near them. To conciliate the vested interests which raised

Opposition in
Parliament.

¹ Through Harecastle Hill, near Newcastle-under-Lyme.

² There was the same opposition to the flying coaches, which, about the year 1669, began to run between London and the chief provincial towns. "It was vehemently argued that this mode of conveyance would be fatal to the breed of horses, and to the noble art of horsemanship; that the Thames, which had long been an important nursery of seamen, would cease to be the chief thoroughfare from London up to Windsor,

and down to Gravesend; that saddlers and spurriers would be ruined by hundreds; that numerous inns, at which mounted travellers had been in the habit of stopping, would be deserted and would no longer pay any rent. On these grounds it was gravely recommended that no public carriage should be permitted to have more than four horses, to start oftener than once a week, or to go more than thirty miles a day." (Macaulay's Hist. c. 3.)

this local opposition, the canal was so laid out as to pass some of the larger towns at a distance.¹ In short, the arguments used sixty years later against railways were anticipated, with as little justification for prejudices or fears of injury ; with the same bitter but unavailing regrets, too, by towns which at their own request were left out of the new line of communications.

Bill passed,
1766.

After weighing the merits of the rival bills which came before it, Parliament, in 1766, sanctioned Brindley's scheme. It was probably the most expensive contest which up to that time had ever been waged at Westminster. Promoters had now full opportunities of learning what was meant by preliminary expenses. Wedgewood alone subscribed 1,000*l.* to this fund ;² liberal and brimful of energy in this as in every other business, when he thought he saw his way clearly. In truth, the cheaper and quicker transit of raw materials, of manufactured goods and agricultural produce,³ stimulated industry, increased population, and created wealth, so as to justify the most sanguine expectations of the first canal projectors ; while Parliament, by its legislation in furtherance of canals and of

¹ Smiles's "Lives of the Engineers," I. 436, where is cited a curious passage from a prominent advocate of inland navigation, that, in order to meet these objections, "no main trunk of a canal should be carried nearer than within four miles of any great manufacturing and trading town ; which distance from the canal should be sufficient to maintain the same number of carriers, and to employ almost the same number of horses as before." ("Advantages of Inland Navigation," by R. Whitworth, 1766.)

² *Ib.* 433.

³ "The cost of carrying a ton of goods from Liverpool to Etruria, the centre of the Staffordshire Potteries, by land-carriage was 50*s.* ; the Trent and Mersey reduced it to 13*s.* 4*d.*

The land-carriage from Liverpool to Wolverhampton was 5*l.* a ton ; the canal reduced it to 1*l.* 5*s.* The land-carriage from Liverpool to Birmingham, and also to Stourport, was 5*l.* a ton ; the canal reduced both to 1*l.* 10*s.* Thus the cost of inland transport was reduced, on the average, to about one-fourth of the rate paid previous to the introduction of canal navigation. The advantages were enormous : wheat, for example, which formerly could not be conveyed a hundred miles, from corn-growing districts to the large towns and manufacturing districts, for less than 20*s.* a quarter, could be conveyed for about 5*s.* a quarter." (Quoted, *ib.* 447, from Baines's "History of the Commerce and Town of Liverpool.")

agriculture, probably contributed more largely to the national prosperity than by any other group of public or private measures passed towards the close of the last century.¹

In this supply of inland water communication, there was no cause for national boasting. Great Britain was, indeed, more favoured with navigable rivers than most other nations; and where rivers were not navigable, some of them, as we have seen, had been made so by art. But we lagged far behind most other European countries in supplementing these natural resources, and in acting upon Brindley's reported opinion, given before a Parliamentary Committee, that the chief use, even of a navigable river, was to feed canals.² Nor does the mileage of our canals, or the capital invested in them, seem considerable, even relatively to the trade which they were to accommodate, and the national wealth, at the period when they were made.³ We shall see presently how

Canals long
delayed in
England.

¹ Over a hundred canal Acts were passed before 1800; there was a canal mania in 1791-4, like the railway mania which broke out on a larger scale in 1845-6; and eighty-one canal and navigation Acts were passed in those four years alone.

² "At a time when Holland had completed its magnificent system of water communication, and when France, Germany, and even Russia had opened up important lines of inland communication, England had not cut a single canal." Smiles's Preface, p. 7. In this, as in other supposed triumphs of modern civilization, China was many ages in advance of Europe, and probably of the canals of Egypt and the East.

³ Authorities differ both as to the existing canal mileage and capital. Mr. Calcraft, Assistant Secretary of the Board of Trade, puts the mileage of canals and inland navigations in the United Kingdom at 3,029, exclusive of the Caledonian Canal and the larger river navigations. (Commons'

Committee on Canals, 1883, App. p. 214.) Mr. Taunton, C.E., estimates the canals proper at 2,671 miles; river navigations, 1,141 (ib. 228); Mr. Lloyd at 4,050 for England and Wales alone (ib. 209); Mr. Conder, G.E. (ib. 111), makes the length of canals in England and Wales 4,332 miles, with a capital of 19,145,000*l.*; and a total inland navigation in the United Kingdom of 7,336 miles. Mr. Smiles (at p. 464 of the work already quoted) sets the canal mileage at 3,100, constructed at a cost of about 50,000,000*l.* For this account of capital no authority is given, and it largely exceeds the most recent estimates. The disturbing element in the calculation is, no doubt, the river navigation trusts or companies; it is not always easy to separate these from canals properly so called. The supposed capital of 19,145,000*l.* is founded on returns from canal companies given in Com. Paper 184 (1870), which does not, however, allow for the large sums spent on

badly they fared under the stress of competition with railways. In part, however, their present forlorn condition is due to faults of construction.

Faulty construction.

Instead of being walled, wholly or partially, according to the most approved modern methods, nearly all the old canals were made with sides sloping towards the middle. They were, in fact, "enlarged ditches, with a top-water of thirty feet, or thereabouts, and a bottom of fourteen feet, having inclined slopes on either side."¹ The result was a constant

Silting.

tendency to silting, which seriously reduced the carrying capacity of a canal. Thus, from London to Liverpool, via the Shropshire Union Canal, the maximum through load is twenty-five tons; whereas it is alleged that, if the waterway were in a really good condition, thirty tons could be carried.² Another great hindrance to inter-communication by canals is the want of a common gauge. In England

Difference in dimensions of canals and locks.

and Wales, it is stated, hardly two canals correspond in this respect. Upon the canals by which the Derbyshire coal used to be brought to London, the Grand Union was only seven feet wide, half the width of most of the other waterways; the average width of the locks along the entire route was fourteen feet six inches; but there was one link in the navigation that had only seven feet; and some of the locks had no more than a depth of three-and-a-half feet of water on their sills. The effect of varying gauges in a through communication is to limit the carrying power to that of the smallest area. Upon the route just mentioned, it is stated that the practical result is a maximum through-carrying capacity of twenty-four tons; whereas, for a considerable portion of

works by many companies out of annual revenue during their prosperous days. (Commons' Committee on Railway Amalgamation, 1872, evidence of Sir T. H. Farrer.)

¹ Commons' Committee on Canals, 1883; evidence of Mr. Lloyd, p. 14.

² *Ib.* p. 13; and see an excellent digest of the evidence given before

the Committee of 1883, at pp. 1196-9, vol. 2, part 2, of Burdett's Official Intelligence of the Stock Exchange. The canals owned by railway companies appear to be in the worst condition. One is mentioned which, instead of carrying 25 or 30 ton vessels, will now only carry vessels of 17 tons.

the route, the gauge will admit a boat of from sixty to eighty tons burden.¹ Economy of transit is obviously incompatible with these conditions. The necessity of a uniform gauge on canals, as on railways, is now clear enough. We need not wonder that, in the eighteenth century, Parliament was no wiser than the engineers, and had not learnt this lesson.

The rise of our railway system, so far as it is to be gathered from the statute book, forms an almost continuous record with that of our canals. Smooth tracks of stone, or grooved rails of wood or iron, had long been used to take coals or other minerals from the pit's mouth to the place of shipment. Statutory powers were not sought for these ways. When they traversed land not belonging to the owners, a way-leave was rented or leased; if they crossed a public road, the consent of the local authorities was generally obtained without much difficulty.² Railways.

Some old Canal Acts allowed the adventurers to make railways as feeders to the canals for goods or minerals. For example, in 1776, the Trent and Mersey Navigation Company were authorized to make, among other railways, one from Froghall to Caldon, in Staffordshire;³ and in 1802 further railways were sanctioned, extending from various points on their canal to Lane End, Hanley and Burslem. These lines, the preamble recited,⁴ would be "of great advantage to the extensive manufactories of earthenware established at those First sanctioned as feeders to canals.

¹ Lloyd, Evidence, p. 6 *et seq.*; Burdett, p. 1197.

² Nicholas Wood, a pupil of the elder Stephenson, in his Practical Treatise on Railways, says the worn track or rut in roads first suggested these aids to traction, and dates their adoption between 1602 and 1649. Roger North, in a passage often quoted, describing a visit paid by his brother, Lord Guildford, to Newcastle when on circuit (in 1676), mentions both wayleaves and railways:—"When men have pieces of land between the collieries and the rivers, they sell leave to lead coals

over their ground, and so dear that the owner of a rood of ground will expect 20*l.* per annum for this leave. The manner of the carriage is by laying lines of timber from the colliery down to the river, exactly straight and parallel, and bulky carts are made with four romlets fitting these rails, whereby the carriage is so easy that one horse will draw down four or five chaldron of coals, and is of immense benefit to the coal merchants."

³ 16 Geo. III. c. 32.

⁴ 42 Geo. III. c. 25.

places, and of public utility." The Act accordingly sanctioned a railway from the company's canal at Stoke-upon-Trent to Lane End; another from their canal at Etruria to Hanley; and a third from Dale Hall to Burslem, "for the passage of waggons and carriages, of forms and constructions, and with burthens suitable to such railways, to be approved of by the company," at the tonnage rates specified. In 1792 the Monmouthshire Canal Navigation Company were authorized "to make railways or stone roads" from their canals to various iron works and mines in the counties of Monmouth and Brecknock; and in 1802 they obtained powers to make further railways.¹ The Grand Junction Company were authorized in 1793 to make a railway at Blisworth, and "a collateral communication by cuts, railways or other ways and means" between their canal at Gayton, to join the navigation of the river Nene at Northampton.² There are several other instances of like powers granted by Parliament before the close of the eighteenth century. Thus the disasters which afterwards befel so many canal companies arose from a means of transport which they were the first to adopt under statute, and prove the utility of. The weapon which pierced them came from their own armoury.³

Surrey Iron
Railway
Company,
1801.

A southern county was first in promoting what may be called a pure railway bill. In 1801, twenty years before the Stockton and Darlington Act was passed, Parliament sanctioned a railway from Wandsworth to Croydon, with a "collateral branch to Carshalton," for "the advantage of conveying coals, corn and all goods and merchandize to and from the metro-

¹ 32 Geo. III. c. 102; 42 Geo. III. c. 115. The Act of 1792, like other Acts obtained at this period, gave the company wide powers of making railways, waggon-ways, or stone roads, to any existing or future iron-works, limestone quarries, or coal mines within eight miles of their canals. Another section enabled the company to charge a toll for cattle, not conveyed on the railway, but driven

along it, as upon an ordinary highway.

² 33 Geo. III.

³ One canal owner, at least, foresaw what a dangerous rivalry might spring up. The Duke of Bridgewater, when congratulated by Lord Kenyon on the success of his new waterway, replied—"Yes, we shall do well enough if we can keep clear of those cursed railroads."

polis.”¹ Two years afterwards another railway was sanctioned from Croydon to Reigate, with a branch from Merstham to Godstone Green.² Both companies met with difficulties, and came to Parliament in 1806 for fresh powers to complete their respective schemes.³ A railway was sanctioned from Swansea to Oystermouth in 1804.⁴ Several similar Acts, promoted by what were called Iron Railway Companies, were passed at this period.

Croydon,
Merstham
and Godstone
Iron Railway,
1803.

The Act of 1801, upon which the rest of this early railway legislation is framed, follows the canal precedents in their provisions for managing the company's affairs, for raising share and loan capital, and for compensating land-owners. Only the use of horse power was contemplated. The tracks, when laid down, were meant, like canals, for general use by carriers and freighters. The companies did not provide rolling stock; any persons might construct carriages adapted to run upon the rails; and if these carriages were approved, certain maximum tolls applied to any freight they might carry. Judged by the standard of that day, these tolls were not excessive. Between Wandsworth and Croydon, chalk, lime and other manures were charged at the rate of three-pence per ton per mile; coals, corn, potatoes, iron and other metals, fourpence; and all goods not specified, sixpence. Passenger traffic was not expected or provided for, although a precedent might have been found for such traffic on canals, as the Duke of Bridgewater had added to his revenue by conveying passengers in horse-boats between Manchester and Worsley.

Haulage.

Tolls.

Such was the first Railway Act, passed at the beginning of the century with little notice by Parliament or people, but now a social landmark, prominent even in that stormy period of history. Fortunately it was not with railways as with canals. British engineers and projectors were the first to invent and apply the new mode of transport, and afterwards had

¹ 41 Geo. III. c. 33.

² 43 Geo. III. c. 35.

³ 46 Geo. III. c. 93, and c. 94. The Surrey Iron Railway Company were

dissolved, and obtained powers to sell their undertaking in 1846 (9 & 10 Vict. c. 333).

⁴ 44 Geo. III. c. 55.

their reward, finding their skill and capital sought for similar enterprises all over Europe. Yet in England one man was before his time, and met with the usual fate of projectors for whose plans the world is unprepared. No sketch of railway development and legislation would be complete which omitted to notice the remarkable prescience shown by a poor mechanic of Nottingham named Thomas Gray. Tracks and rails, when used in collieries or as auxiliaries to canals, had proved the great advantage of these methods in easing draught by lessening friction. In 1801, and subsequent years, the process had been carried a stage further by giving to railways an independent existence. Meanwhile Murdock, Trevithick, Blenkinsop, George Stephenson and others had tried, not yet very successfully, to construct steam coaches to run upon high roads or upon rails.¹ Gray put together these plans and experiments, expanding them into a project for a general system of iron railways to convey passengers as well as goods, with steam for the motive power.

Gray's proposals were published in 1819, but before that time he had been pressing them in vain upon public notice in the shape of memorials to members of the Government, and letters to corporations and capitalists. There are now five trunk lines from London, starting from the north of the Thames. Gray suggested six, running to the chief commercial centres, with branch lines to towns not situate upon the main arteries of communication. Waggon and coaches might be propelled upon the rails by steam, or drawn by horses. Incalculable advantages to the country would arise from this new employment for labour:—the cheapening of raw materials, provisions, fish and vegetables; the quicker carriage of mails; the saving in horseflesh, and in wear and tear of roads; the

¹ Trevithick in 1804 built a locomotive which ran on the Merthyr Tydvil Railway; and his "Black Billy," made in 1812 for Mr. Blackett, the Northumberland coal owner, became famous in the north. Stephen-

son produced a better locomotive in 1814; it was the first made with smooth-tired wheels, and drew a load of thirty tons up a slight ascent at the rate of four miles an hour.

Thomas Gray,
of Nottingham.

His plan for
general iron
railway.

Public bene-
fits expected.

superior speed and economy of transit both for passengers and goods. Plates and maps accompanied his work, and explained the course of each parent line and its branches. For Great Britain he thought that two thousand miles of railway would at first suffice; for Ireland seven hundred miles. His estimate of cost was six thousand pounds a mile. A total outlay of twelve millions would thus be required. The sanguine projector hardly ventured to suppose that a sum so enormous could ever be raised by public subscription. However this might be, he felt assured that the saving in horse-keep alone "would more than provide for the steam engines necessary for this new projection, as well as defraying the whole annual expense of repairs on the General Iron Railway."

Mileage and outlay.

Gray was treated as a man who saw visions, and drew his inspiration from the clouds. His advice was neglected; his idea of a general railway scouted as altogether impracticable.¹

Gray's plan scouted.

¹ *Quarterly Review*, March, 1825. "As to those persons who speculate on making railways general throughout the kingdom, and superseding all the canals, all the waggons, mail and stage-coaches, post-chaises, and, in short, every other mode of conveyance by land and by water; we deem them and their visionary schemes unworthy of notice." The Reviewer adds a well-known passage, referring to the Woolwich Railway: "It is certainly some consolation to those who are to be whirled at the rate of eighteen or twenty miles an hour, by means of a high pressure engine, to be told that they are in no danger of being sea-sick while on shore; that they are not to be scalded to death, nor drowned by the bursting of the boiler; and that they need not fear being shot by the scattered fragments, or dashed in pieces by the flying off or the breaking of a wheel. But, with all these assurances, we should as soon expect the people of Woolwich to suffer them-

selves to be fired off upon one of Congreve's ricochet rockets, as trust themselves to the mercy of such a machine, going at such a rate. Their property they may, perhaps, trust; but while one of the finest navigable rivers in the world runs parallel to the proposed railroad, we consider the other twenty per cent. which the subscribers are to receive for the conveyance of heavy goods almost as problematical as that to be derived from the passengers. We will back old Father Thames against the Woolwich Railway for any sum." Yet the article was on the whole favourable to railways; supported the line between Manchester and Liverpool against the opposition of the canal proprietors; and declared that the public were interested in any competition which should force these companies to reduce rates then extremely burdensome to traders, and returning in some cases a hundred per cent. of profit upon canal outlay.

But he lived long enough to see his project carried out by private enterprise, and by piecemeal, instead of as a whole, and as a great national undertaking. Perhaps had he been told that, before the century was much older, a single company would own a greater mileage than that which he suggested for the whole of Great Britain, and that another company would raise by loan or subscription a capital eight times greater than that which he timidly asked for as the total cost of the British railway system, he, too, would have thought his informant a dreamer. As it was, the glimmering of the truth which reached him he preached to deaf ears, dying poor and obscure; and the only amends that can now be made is to preserve his memory from neglect in any record of those great industrial changes which he saw so clearly and worked for with such scanty requital.

Railways, unlike canals, independent of seasons.

One obvious advantage claimed for the new over the existing system of transport was, that it would be available at all seasons, and would not be interrupted by drought in summer, or by frost in winter. It was seen that any increase of canals was limited, in most districts, by want of a sufficient water supply. Iron railways, therefore, were put forward as substitutes for canals, where these were impracticable, or as supplemental to them where they already existed, just as canals had in their day been supported because they filled up the gaps left by rivers and river navigations. These pioneer railways, however, were of little importance in themselves, and seemed likely to have little effect upon the traffic enjoyed by canals. It was otherwise when the locomotive gradually developed into a practical means of haulage, and attracted the attention of capitalists who saw in it the promise of high dividends. Then, indeed, owners of canals became alarmed for their monopoly.

Stockton and Darlington Acts, 1821-3.

The first Stockton and Darlington Act, in 1821, followed pretty closely the provisions of the Iron Railway statutes, and aimed no higher than a horse tramway for minerals and goods; the projectors taking powers to "let to farm"

their rates, much as though they were going to make a turnpike road, and let or lease the tolls. Two years later, prompted by the success of George Stephenson's improved locomotive, they obtained fresh powers for the use of steam engines; moveable for use on ordinary gradients, fixed for use on inclines. Parliament naturally watched the new experiment with some jealousy, in the wish to protect private interests from nuisance or danger, and prohibited the promoters from taking land for the erection of stationary engines except with the owner's consent. In 1823, also, Parliament first recognized that a railway company might possibly supply haulage power, by means of the locomotives they proposed to construct and own. But the alternative use of horse or mechanical power by other persons was not excluded, for experience was yet to prove that on railways, as in States, divided authority means anarchy, and that traffic can be safely and regularly carried under no other conditions than its control by one responsible head.

In 1823, for the first time, we find provision made for passenger traffic; but only as though it were an after-thought, mentioned in the Act with hesitation, as a possible aid, though a small one, to the main source of revenue, that from goods and minerals. No passenger carriages were to be provided by the company. They were only authorized to charge a maximum mileage of sixpence upon "every coach, chariot, chaise, car, gig, landau, waggon, cart or other carriage," drawn or used upon their line; and there was no limit upon the number of passengers in each carriage subject to this mileage rate.¹ At this period the flange, or flanch, as it is called in the first Stockton and Darlington Act, was on the rail, not the wheel; and the height of this flange was accordingly restricted when a road was crossed on the level.²

¹ 4 Geo. IV. c. 33, s. 22.

² Mr. Brunlees, C.E., describes the substitution of the flanged wheel for the flanged rail—the rail being lifted clear from the ground and the

guide put upon the wheel instead of on the rail—as an organic change, which has rendered possible the great results accomplished in modern railway travelling. Among other changes

Liverpool and
Manchester
Railway,
1826.

Three years passed after the first Stockton and Darlington Act before any other projectors were bold enough to appear before Parliament. In 1824, applications for two new lines were successful; but the Liverpool and Manchester bill of that year was rejected after a contest which lasted two months; the canal interest and the great landowners forming, together, an overwhelming opposition.¹ Before 1826 many prejudices against railways were removed; merchants and traders in both towns made out a strong case;² and the bill was then sanctioned with nine others. The company, however, were forbidden "to use or employ, or hire the use of, or permit or suffer any other person to use or employ, any loco-

essential to the safety and rapidity of railway traffic, have been the enormous increase of break power, and the improved system of signalling. The latter began on the Stockton and Darlington line with a candle placed in a station window—meaning that the train was to stop for passengers; no candle meaning no stoppage—and has culminated now in a complicated apparatus of levers, supplemented by the electric telegraph, which "may be said to have reduced the element of human fallibility to as low a point as human ingenuity is capable of compassing." (Address as President of Mechanical Section of British Association, 1883.)

¹ Gray had, some years before, suggested that this line should be made as a first experiment. "All sorts of evidence were brought forward: that the railway would stop the milk of cows and the growth of grass; would poison the game; would burn down the farms; would frighten horses; would cost 270,000*l.* to get through four miles of Chat Moss; would be utterly unsuccessful, and yet would ruin the stage-coaches." (Bridges Adams' "Roads and Rails.") A civil engineer ex-

amined in Parliament was sure that no railway could be carried over Chat Moss without cutting out the bog, some 33 feet deep, throughout its whole length and filling up with other soil.

² Before the railway was made, heavy goods arriving at Liverpool for Manchester were first sent up the Mersey to Runcorn, a distance of about twenty miles, and thence by canal, making a total distance of fifty miles. In summer, through a deficiency of water, boats could often go only half-loaded; in winter, the navigation for weeks together was often impeded or suspended by ice. In the Mersey frequent delays occurred through bad weather and contrary winds. The average length of time for the transit was thirty-six hours; but, owing to these obstructions, goods were occasionally longer on the way by water from Liverpool to Manchester than from New York to Liverpool. ("Roads and Railways," p. 304.) To ensure expedition, cotton and manufactured goods were frequently carted by road, a distance of thirty-five miles, at a cost exceeding four or five times that charged by railway.

motive engine upon their railway within the town of Liverpool.”¹

Some years after railways had come into general use, inventors hoped to be able to compete with them successfully for passenger traffic by steam carriages running upon common roads. In 1829, Mr. Goldsworthy Gurney, who had patented a steam carriage, travelled on it from London to Bath and back, performing the last eighty-four miles, from Melksham to Cranford Bridge, in ten hours, including stoppages, with a maximum speed of between twenty and thirty miles an hour. After 1830, great attention was given to the construction of these vehicles; and, in 1832, a Committee of the House of Commons was appointed to inquire into their utility. Many scientific witnesses were examined before this Committee.² It was shown that steam coaches were then carrying passengers in various parts of the kingdom, and that many more were being built for the same purpose; that they succeeded in traversing “the worst and most hilly

Steam carriages on turnpike roads.

Commons' Committee, 1832.

¹ 7 Geo. IV. c. 49, s. 12. The names of the promoters of the Stockton and Darlington and Liverpool and Manchester Acts—names some of which are still honourably known in the commerce and industries of the north of England—are recorded in Appendix D.

² Among others, Mr. Goldsworthy Gurney, Mr. Farey, Mr. McAdam, Mr. Richard Trevithick, Mr. Davies Gilbert, M.P. (a member of the Committee, who had been President of the Royal Society), Mr. Telford, C.E., and Mr. Maeneil. Trevithick, a fertile genius who too often sowed where others reaped, explained with pardonable pride the great work done by his high-pressure pumping engines in the Cornish mines and by other inventions:—“The first locomotive ever seen was one that I set to work in 1804, on a railroad at Merthyr Tydvil, which performed its work to admiration. . . . In 1804 I

invented and introduced the high-pressure steam and locomotive engines, and also, in 1813, invented the iron tanks and buoys for his Majesty's navy. In 1814 I was engaged by the Spanish Government to construct in England nine high-pressure steam-engines and a mint, with pump-work and everything complete for draining the great mines of Paveo in Peru. They weighed 500 tons, in 20,000 pieces, the boilers each of six tons weight, all in single plates, and the cylinders each in six pieces, all carried up the mountains on mules' backs and put together on the spot, by which the mines were effectually drained, the ores wound up, stamped, smelted and coined. They remained in full work until the Spanish army retreated through the mines before the patriots, and on their retreat broke the engines and threw them into the engine-pits.” (Evidence, pp. 63, 64.)

roads ;" that an experimental carriage had run from London to Southampton, in some places at a speed of over thirty miles an hour, had "ascended a hill, rising one in six, at sixteen miles an hour, and traversed four miles of road at the rate of twenty-four miles an hour, loaded with people."

Favourable
report.

The Committee were greatly impressed by the practical results to which so many witnesses testified, and reported strongly in favour of steam carriages on common roads. They were convinced that such carriages could travel at an average rate of ten miles per hour, conveying upwards of fourteen passengers ; that their weight, including engine, fuel, water and attendants, might be under three tons ; that they could "ascend and descend hills of considerable inclination with facility and safety," were "perfectly safe for passengers," were not, at all events need not be, if properly constructed, nuisances to the public, and would become "a speedier and cheaper mode of conveyance than carriages drawn by horses."¹

Prohibitive
turnpike
tolls.

One reason for appointing this Committee was that, in various recent turnpike Acts, Parliament had been induced to sanction prohibitive tolls upon steam carriages. Thus, by the authority of various Acts, the tolls paid for a loaded stage coach on the Liverpool and Prescott road were four shillings, while twelve times that sum was charged for a steam carriage. On other turnpike trusts the proportion was even greater.² Two reasons were given for the imposition of these exorbitant tolls : one, the wear and tear of roads ; the other, a fear lest steam carriages should drive off

¹ Commons Committee on Steam Carriages, 1832, Report, p. 15. Steam carriages were made shaped like omnibuses, stage-coaches, and even gigs.

² The Liverpool and Prescott Act authorized "the monstrous toll of 1s. 6d. per horse-power, as if it were a national object to prevent the possibility of such engines being used."

(Ib. p. 12.) Other turnpike trust Acts based the toll on the number of wheels. On the Bathgate road a steam-carriage was charged 1*l.* 7*s.* ; a four-horse coach, 5*s.* On the Ashburton and Totnes road a steam-carriage was charged 2*l.* ; a four-horse coach, 3*s.* On the Teignmouth and Dawlish roads the proportion was 12*s.* to 2*l.*

the post-chaises, stage coaches and other vehicles, which yielded to the trusts their chief revenue. As to the former reason, the Committee came to the conclusion that roads were not injured so much by wheels as by the feet of horses in common draught, so that steam carriages would cause less wear and tear of roads than coaches drawn by horses, especially as they admitted of greater breadth of tire than other carriages. The Committee, therefore, recommended that any exceptional tolls imposed on steam carriages by local Acts should be suspended during three years; meanwhile the more moderate tolls which they suggested should be substituted. No legislation, however, followed the report; the prohibitory charges on several lines of road remained unaltered; and the increasing speed, cheapness and certainty of passenger traffic on railways combined, with this discouragement, in putting an end to what seemed a promising experiment.¹

Recommendation of Committee.

It is beyond the scope of this work to enter at length into the great controversies which raged, after Parliament had sanctioned the Liverpool and Manchester Railway, as to stationary or moveable steam engines, atmospheric or locomotive systems of traction, and broad or narrow gauges. The details of these contests, both outside and within the Parliamentary arena, may be found in many works of

¹ Lord Althorp, in 1832, proposed a heavy tax upon passengers conveyed in the steam carriages then running upon the ordinary highways. The tax was objected to by Mr. Hume and other members as certain to ruin this new mode of conveyance. The Government replied that it was necessary to treat steam carriages upon the same footing as stage coaches, then subject to the same duties. On this occasion Mr. Spring Rice stated that the Liverpool and Manchester line had caused a loss to the revenue of over 8,000*l.* a year in the di-

minished duty on post-horses and stage coaches; and Lord George Bentinck, a member of the Committee on the London and Birmingham Railway bill, said it had been proved that from the same cause the revenue would lose 78,000*l.* annually if that line were made. Eventually Lord Althorp consented to exempt steam carriages from taxation, with a view to encourage an invention which, it was hoped, would prove a useful check upon the growing monopoly of railways. (14 Hansard, pp. 824, 1302, 1326.)

professional and general interest.¹ But a glance at these subjects will be necessary here to explain the proceedings of Parliament, and the progress of railway legislation.

Early forms
of rail and
wheel.

Parliament wisely refrained from binding the first railway projectors to adopt any specified form of rail. Whether a plank of wood or an iron plate² should be used; whether the rail should be laid on stone or on wooden sleepers, should be flanged or smooth, should be flush with the ground, or sunk, or project above the ground; whether the wheels should be cogged or toothed, fitting into the rail as they revolved, to prevent skidding,³ or should offer a plain surface, guided by the grooved rail:—these were questions with which Parliament did not meddle. Each of these plans, however, had its advocates, and was in turn adopted.

Moveable or
fixed engines.

As with rails so with traction. The restriction upon the use of locomotives in Liverpool had its origin not so much in the jealousy of Parliament as in the apprehensions of those who had invented locomotives, or, at least, adapted them for this new task.⁴ Parliament did not prescribe any

¹ See, among others, Nicholas Wood on Railways; Smiles's Life of George Stephenson; and chapter xiv. of the Memoirs of Robert Stephenson, by Jeaffreson and Pole. I am indebted to Professor Pole's summary for much information upon the controversies mentioned in the text.

² Iron is said to have been first adopted on the tramways at the Colebrook Dale Ironworks, about the year 1767, when, trade being bad and the price of raw iron very low, the managers, as one way of keeping their furnaces going, "thought it would be the best means of stocking their pigs to lay them on the wooden railways, as it would help to pay interest on expenses by reducing the cost of repairing the rails; and if iron should take any sudden rise, there was nothing to do but to take them up and send them away as pigs." (Report

of Commons' Committee on Roads and Railways: Evidence of Mr. Hornblower.)

³ Toothed wheels, working with the rails like rack and pinion, were features of Blenkinsop's locomotive. It was supposed that a smooth wheel upon a smooth rail would skid, *i.e.*, revolve without giving any, or any commensurate, forward motion. Another mode of securing this forward motion was by propellers, consisting of "jointed poles, projecting from the back of the engine, and imitating on a large scale the motion of a horse's hind legs." The engine thus pushed itself along, as a boat is propelled by poling. (Roads and Railroads, p. 278.) It was soon found that natural friction between wheels and rails sufficed to prevent skidding.

⁴ Up to a much later period, George Stephenson, who engineered the

specific method of propulsion, though it insisted on certain safeguards to private interests when promoters intended to employ steam. In 1821, as we have seen, the Stockton and Darlington Company left themselves free to use either horse or mechanical power. Railway projectors in 1826 showed a decided preference for locomotives, and in some cases took express powers to make and use them. The Liverpool and Manchester Act, however, is far less explicit on this point. In fact, even so late as December, 1828, what Robert Stephenson then described as "the suit between stationary engines and locomotives" was still in progress. In 1829, before the Manchester line was opened, the locomotives used on the Stockton and Darlington Railway could only, on easy gradients and at their best speed, run with a load of 70 tons behind them at a rate of about six miles an hour; and in that year two eminent engineers, appointed by the Liverpool and Manchester Board, after carefully examining these locomotives, reported in favour of fixed engines. The reasons were chiefly economical; and it is only fair to remember that they were based on the rough specimens of locomotive construction then existing, before the Rocket was planned, or the multitubular boiler and the steam-blast had shown what new speed and power might be given to locomotives. Messrs. Walker and Rastrick, who were the two inspecting engineers, thought that in any case stationary engines must be used on two inclines of 1 in 96, to which gradients they considered the locomotive system inapplicable.¹ The success of the Rocket in the famous competition at

Liverpool and Manchester line, agreed with his son in deprecating the use of locomotives in towns, on account of the danger of fire from sparks. They, therefore, advocated the use of fixed engines, with ropes. (Evidence of Robert Stephenson before Commons' Committee on Black-wall Railway Bill, May 17, 1836.) For the same reason, and for better working, the incline from Camden

Town to Euston, part of the London and Birmingham Railway, nearly a mile long, and with an average gradient of 1 in 106, was worked up to the year 1844 by stationary engines and ropes. On the Black-wall line the use of ropes continued until 1849.

¹ 1 Jeaffreson & Pole, pp. 122, 123, and 294-8.

Rainhill turned the scale against fixed engines, except upon steep inclines; and further improvements in the locomotive "gradually led to the almost entire abandonment of rope traction in this country," so that "gradients which it would have been impossible for the earlier engines to surmount with a load equal to their own weight, are now ascended with ease by heavy trains at moderate speed".¹

The first experiment of importance with the atmospheric system of traction on railways was made in June, 1840, on a short line at Wormwood Scrubs, connecting the London and Birmingham and Great Western Railways with the Kensington Canal. The exhausting pumps were worked by a steam-engine of fifteen-horse power, and it was found that, even with the small pipe there used, a load of thirteen tons could be propelled up an incline of about 1 in 115 at a rate of twenty miles an hour, and with greater pressure a load of five tons would go forty-five miles an hour.²

In 1842, the Board of Trade sanctioned the trial of the same principle on a part of the Dublin and Kingstown system, which, on account of its steep gradients and sharp curves, was considered unsuitable for working by locomotives; and a grant of 25,000*l.* was made by Parliament for the purpose of the trial. This grant was chiefly due to the influence of Sir Robert Peel, then First Lord of the Treasury, a staunch supporter of the atmospheric system.³ The line was a single one, from Kingstown to Dalkey, and had been used for the carriage of stone for the works at Kingstown harbour. The average gradient was about 1 in 116, the steepest 1 in 57½. There was one curve of 518 feet radius, another of 700. The atmospheric tube was of fifteen inches internal diameter,

¹ Mr. Brunlees, in the Address already cited. Fixed engines and wire ropes are still used on some mountain railways, as on the St. Paulo line in Brazil, where a height of 2,500 feet has to be attained within five miles. This ascent is divided into four inclined planes; each with a gradient

of one in nine feet and three-quarters, and of an average length of a mile and a quarter, and each furnished with a winding engine of 150-horse power. (Ib.)

² 1 Jeaffreson & Pole, p. 309.

³ Ib., p. 311.

The atmospheric system.

Dublin and Kingstown line.

placed between the two rails. The steam-engine which worked the air-pump was of 100-horse power. With this apparatus it was found that thirty tons could be drawn up the incline at a speed of about thirty miles an hour, and seventy tons at about twenty miles; and, considering the difficulties of the road, these results were considered satisfactory.¹

In 1844 an Act was obtained for the construction of a railway between Chester and Holyhead; and the engineer, Robert Stephenson, was asked to visit Kingstown, and consider the expediency of adopting the atmospheric system on the new line. His report, dated April 14, 1844, admitted that "the mechanical details of the apparatus employed at Kingstown had been brought to a remarkable degree of perfection." He also admitted that even the improved locomotive then in use, "as a motive power on steep gradients, is wasteful, expensive and uncertain;" that, "therefore, on a long series of bad gradients, extending over several miles, where the kind of traffic is such that it is essential to avoid intermediate stoppages, the atmospheric system would be the most expedient;" and, further, "that the atmospheric system is capable of being applied to somewhat steeper gradients, and on such gradients a greater speed may be maintained than with locomotive engines." The safety of the atmospheric system was, as he allowed, nearly perfect; but he thought that further experience would diminish the risk with locomotives.

Chester and
Holyhead
Railway.

Robert
Stephenson's
Report on
Atmospheric
System.

As may be supposed, notwithstanding his frank admissions, Robert Stephenson's conclusions were strongly adverse to the atmospheric system, which, as he maintained, (1) "is not an economical mode of transmitting power, and is inferior in this respect both to locomotive engines and stationary engines with ropes;" (2) "is not calculated practically to acquire and maintain higher velocities than are comprised in the present working of locomotive engines;" and (3) "would not in the majority of instances produce economy in the original

Adverse con-
clusions.

¹ Ib., pp. 311, 312.

construction of railways, and in many would most materially augment their cost." On long lines of railway, he explained, the requirements of a large traffic "cannot be obtained by so inflexible a system as the atmospheric, in which the efficient operation of the whole depends so completely upon the perfect performance of each individual section of the machinery."¹

Croydon and
Epsom line,
1844.

The champions of the two methods of traction soon came into conflict in Parliament. In May, 1844, a Committee of the House of Commons inquired into a bill for a line between Croydon and Epsom, to be worked by atmospheric traction; and Mr. Cubitt, the engineer of the new line, was supported in his evidence by Mr. I. K. Brunel and other professional witnesses. Mr. Stephenson, examined on behalf of the opponents, was of course confronted with the admissions in his report, one of which was that on a short line of railway near large towns, where frequent and rapid communication is required between the termini alone, the plan might be advantageously adopted. The Committee reported in favour of the bill, and the line was made and worked by atmospheric traction until May, 1847.

Lord
Howick's
Committee,
1845.

Railway
Department,
Board of
Trade.

In 1845, as several new lines were proposed on the same principle, the House of Commons was asked to appoint a Select Committee to inquire into the merits of the atmospheric system.² At this period the Railway Department of the Board of Trade, in their reports upon various railway projects,³ had declared in favour of locomotives. They admitted that the result of the atmospheric system was likely to be "an acceleration of speed in travelling, combined with the general introduction of very frequent trains and low fares;" and that the experiment at Dalkey was "to a great extent conclusive" in favour of the system, "considered as a mechanical problem," demonstrating, as it did, "that trains might be propelled by means of it at high velocities with

¹ 1 Jeaffreson & Pole, pp. 316-30, where copious extracts are given from this masterly report.

² Hansard, March 14, 1845.

³ Among others, the Newcastle and Berwick and Kentish and South-Eastern lines.

safety and convenience to the public." But they added that, in judging between competing schemes, they could not assume that atmospheric traction would be a practical and commercial success; and they reported upon those schemes accordingly.

The friends of atmospheric traction believed this conclusion to be an erroneous one, and thought they would be able to satisfy Parliament that the system was not only a mechanical but a financial success. They pointed to contracts entered into with substantial firms for the Drogheda line of eighteen miles and the South Devon line of fifty-two miles, both to be worked on the atmospheric plan¹; and declared that the cost both of working and of maintaining the two systems was greatly to the disadvantage of locomotives.² The motion for a Committee was stoutly opposed, but the opposition was withdrawn upon Sir Robert Peel's assent to the inquiry.

Drogheda
and South
Devon lines.

When the Committee met, the elaborate calculations and practical arguments against atmospheric traction, contained in Robert Stephenson's report, furnished the chief materials for the opponents of that system. Other objections were stated, such as the impossibility of making level crossings, or of having junctions with branch lines except at the principal stations; the difficulties of shunting or working traffic at intermediate stations, and of stopping trains upon a sudden emergency; the great cost of running only a few trains, as at night. Among the opposing witnesses, besides Robert Stephenson, were G. P. Bidder, Joseph Locke and Nicholson; while on the other side were Brunel, Cubitt, Samuda, Vignoles and Field. Public feeling ran high, but, on the whole, seemed to side with the views of Brunel and his school, chiefly, perhaps, on account of the superior safety of atmospheric traction and the prospect it held out of a high speed, combined with frequent trains and low fares.

Objections
urged before
Committee.

We can now see clearly enough that the vast expansion

¹ Speech of Mr. Shaw in proposing Committee, 78 Hansard, p. 939.

² Speech of Viscount Howick, *ib.*, p. 942.

Views prevailing in 1845.

of railways and of railway traffic, and the complicated connections between various systems and parts of systems by running powers and by branches, would have been impossible with a rigid method of propulsion like that advocated by Brunel. In 1845, however, the net-work of railways that was to be spread all over the country could not be foreseen even by the most sanguine railway projectors. Meanwhile, although the Railway Department of the Board of Trade did not recognize the Dalkey experiment as affording sufficient proof of a commercial success, two experts, men of acknowledged eminence, who had been sent over as Commissioners to inspect and inquire on behalf of the Government, had been won over by proofs of its successful working.¹ The Croydon and Epsom, the South Devon and other atmospheric lines, had been sanctioned by Parliamentary Committees after lengthened inquiry; engineers high in their profession and of practical experience had faith in the system; above all, even its most determined opponents owned that, under certain conditions, atmospheric might be superior to locomotive propulsion.²

Favourable report of Committee.

No surprise, therefore, need be felt that the Select Committee of 1845 reported in favour of the new system. They found that the Dalkey line had been open for nineteen months and had been "worked with regularity and safety," the few interruptions which had occurred having "arisen rather from inexperience than from any material defect of the system." They also found "that high velocities have been obtained with proportional loads on an incline averaging 1 in 115;" and this on a line which, from its curves and gradients, would have been barely practicable for locomotives. In the view of the Committee, these facts "established the mechanical efficiency of atmospheric power to convey, with regularity, speed, and security, the traffic upon one section of pipe between two termini;" and the Committee were satisfied

Reasons.

¹ Report of Lt.-Col. Sir Frederic Smith, R.E., and Professor Barlow, 1842.

² Commons' Committee on Atmospheric Railways, 1845: Evidence of Robert Stephenson.

by the evidence "that there is no mechanical difficulty which will oppose the working of the same system upon a line of any length." They had "no hesitation in stating that a single atmospheric line is superior to a double locomotive line both in regularity and safety."

It had been objected that the atmospheric system could not be profitably employed to carry on a small and irregular traffic, since the expenses of haulage were constant, and could not be materially reduced, however small the traffic might be. The Committee found in this objection a reason on the other side, because expenses did not, as with locomotives, increase with the frequency of trains; and, therefore, companies adopting the atmospheric system would find it their interest to increase their traffic by running frequent light trains at low fares, a result of great public advantage:—

Cost of haulage.

Frequent trains and low fares.

"Upon an atmospheric railway the moving power is most economically applied by dividing the weight to be carried into a considerable number of light trains. By locomotive engines, on the contrary, the power is most conveniently applied by concentrating the traffic in a smaller number of heavier trains. The rate of speed at which trains of moderate weight can be conveyed on an atmospheric line makes comparatively little difference in the cost of conveyance; while the cost of moving trains by locomotive engines increases rapidly with the speed. Now, when it is considered that we surrender to great monopolies the regulation of all the arteries of communication throughout the kingdom, that it depends in a great measure upon their view of their interest when we travel, at what speed we shall travel, and what we shall pay, it becomes a material consideration, in balancing the advantages ensured to the public by rival systems, to estimate, not so much what they can respectively do, but what, in the pursuit of their own emolument, they will do."

A majority of the engineers examined before the Committee were of opinion that "any ordinary traffic" might be carried on with regularity and convenience by a single atmospheric line; but ordinary railway traffic forty years ago would not now enable a railway company to pay its way. Upon the vital point of comparative expense, the Committee owned

Single atmospheric lines.

Relative expense of working.

themselves incompetent to pronounce a decided opinion. The locomotive system was lusty with fifteen years of growth : atmospheric traction was in its infancy. Had it been practicable to suspend all railway legislation until Parliament knew the results of working atmospheric lines now in course of construction, this might have been the most prudent course. As it could not be adopted, the Committee thought that, in judging between competing lines, those on the atmospheric system should not be condemned because they were laid out with gradients too severe for locomotives. To conclude, the Committee were of opinion that there was then " ample evidence which would justify the adoption of an atmospheric line," though " experience alone could determine under what circumstances of traffic, or of country, the preference to either system should be given."

Reception of
report.

It was a cautious and an able report ; and, judged by the light of those days, as in fairness it must be, there appeared good reasons to support it. What it did was to claim fair play for a new invention proved to be fitted for the railway traffic then existing, though not yet proved by the test of experience to be as economical, or as practicable, under all conditions, as its older rival. The result of this report, and of the whole controversy, confirmed the opinions expressed by Sir Robert Peel in the House of Commons. Though, as we have said, on theoretical grounds, inclined to the atmospheric system, and assenting to the inquiry of 1845, Sir Robert Peel confessed that he did not expect any good from the labours of the Committee. Such an investigation as was proposed would not clear up " any speculative point ; for example, whether the Archimedean screw or the paddle-wheel was the best." Public opinion upon these questions would be determined, not by the report of any Select Committee, but by the test of repeated experiments by practical men. It was possible, he added, that the Committee might solve all doubts upon the mechanical part of the question, and might ascertain the exact expense of working ; but the commercial success

Sir R. Peel's
view of in-
quiry.

of the system depended upon a thousand considerations which no Committee could determine.¹

Men of business, in fact, seem to have attached greater weight to the practical objections contained in Robert Stephenson's report than to any opinions expressed by the Committee. Among these objections, the most formidable assumed the application of the atmospheric principle to the London and Birmingham line throughout its length of 111 miles, and then proceeded :—

Robert
Stephenson's
objections.

“ Each train, in moving between London and Birmingham, would be passed, as it were, through thirty-eight distinct systems of mechanism, and it cannot be deemed unreasonable to suppose that in such a vast series of machinery as would be required in this instance, casualties occasioning delay must not unfrequently occur. If the consequences were confined to one train, such casualties would be of small moment, but the perfect operation of the whole is dependent on each individual part, and when the casualties extend themselves not only throughout the whole line of railway, but to every succeeding train which has to pass the locality of the mishap, until it is rectified, whether this occupies one hour or one week, the irregularity must be admitted to be very great. The delay would apply to every train, whatever might be its destination, and to every railway in connection with that upon which the accident occurred. Such a dependency of one line of railway upon the perfectly uniform and efficient operation of a complicated series of machinery on every other with which it is connected, appears to me to present a most formidable difficulty to the application of the system to great public lines of railway; so formidable, indeed, that I doubt much whether, if in every respect the system were superior to that of locomotive engines, it could be carried out upon such a chain of railways as exists between London and Liverpool, or London and York. This difficulty, which is insurmountable and inherent in all systems involving the use of stationary engines, was fully considered previous to the opening of the Liverpool and Manchester Railway, when the application to that line of stationary engines and ropes was contemplated.”

Result of
casualties
with fixed
engines.

This solid reasoning, re-stated before the Select Committee, and enforced with copious illustration, must have been

¹ 78 Hansard, p. 944.

Rival bills of
1845.

accepted as conclusive by projectors and capitalists. It prevailed, also, with one exception, even before the Committees appointed to adjudicate upon the merits of the rival railways of 1845. This exception was a bill for a line between Epsom and Portsmouth. All the other schemes which proposed to adopt the atmospheric system were lost or abandoned; and the Epsom and Portsmouth line was never constructed.¹ After 1845, Parliament sanctioned no atmospheric railway.² The fate of the lines already authorized or working may now be recorded. Until 1855, the Kingstown and Dalkey line continued to use atmospheric traction, and was then absorbed by the Dublin, Wicklow and Wexford Company. The line from London to Croydon, or rather from New Cross to Croydon, was worked on the same principle until May, 1847, some time after it came into the hands of the London and Brighton Railway Company. Under Mr. Brunel's auspices, parts of the South Devon Railway were similarly worked in 1847-8. In September, 1848, locomotives were substituted; and this was the end of the atmospheric system in its application to English railways.

End of atmo-
spheric
traction in
England.

The narrow
gauge.

What became popularly known as the battle of the gauges was fought in Parliament with even greater pertinacity, and was still longer protracted. The first railway Acts contain no provisions regulating gauge, but by common consent engineers adopted the width between the rails which had been in general use on the primitive colliery railways. For these the way-leave or cart track of five feet had been taken, measuring from the rails' outside edge. The surface of each rail being then an inch and three-quarters wide, it followed that the width between the rails was four

¹ 1 Jeaffreson & Pole, 333.

² In 1848 a line to be worked by atmospheric traction, with Mr. Brunel as engineer, was proposed between Newcastle and Berwick, in

competition with the line planned and afterwards sanctioned and carried out by Robert Stephenson, in connection with the High Level bridge.

feet eight and a half inches.¹ This was the standard, afterwards distinguished as the narrow gauge, which the Stephenson and their pupils found, and adhered to in laying out the railways they constructed.

Mr. Brunel was again the leader of a departure from the old ways. When planning the Great Western Railway in 1833,² he came to the conclusion that locomotives might be made more powerful and effective if they had a wider basis for their boilers and machinery, and that carriages of corresponding width might then be made to hold more passengers with greater convenience and also greater safety. In his view the gauge should be made to suit the engine and carriages; hitherto these had been cramped and limited in power and accommodation by forcing them to suit the gauge. The advantages he offered of greater speed, greater safety and easier motion at once made his seven feet gauge popular.

The broad gauge.

Public advantages of.

It was necessary, on the other hand, to satisfy directors and shareholders that the increased cost of a wider line would be repaid to them. This was easily done by statements of the increased accommodation which would be afforded for pas-

Increased cost.

¹ The Rocket weighed four and a-half tons; its loaded tender, three tons four cwt. The first engine run on the Stockton and Darlington line weighed, with its loaded tender, seven tons. A Great Northern passenger engine now weighs forty-four tons fourteen cwt.; and with its loaded tender, over seventy-two tons. To carry these enormously increased weights, rails are now made much stronger and wider. The increased width is given on the outside, so that the flange of the wheels works at the same intervals as before, and the gauge between the rails remains at 4 feet 8½ inches, while, measured from the outside edge of each rail, the original width of five feet is now exceeded.

² The Great Western Railway Bill of 1834 was defeated chiefly through the opposition of the University of Oxford and the school authorities of Eton. "Anybody," it was said, "who knew the nature of Eton boys would know that they could not be kept from the railway;" and that their morals and discipline would suffer accordingly. Hence, in the Act of 1835, the Provost and Fellows of Eton procured the insertion of clauses prohibiting the construction of any railway or station within three miles of the college, save with their written consent, and requiring the Great Western directors to maintain a staff of servants for the purpose of preventing the scholars from all access to the railway at certain points. (Sects. 99—103.)

Barrier
against en-
croachment.

Position of
Great Wes-
tern Railway.

Great Wes-
tern Railway
Act, 1835.

sengers, as well as by the suggestion that a difference in gauge would save the company from any future territorial encroachment by narrow gauge railways. To districts already possessing railways, Mr. Brunel admitted that a new gauge would be inapplicable; not so in districts now for the first time traversed by railways, as in the western and eastern counties. The Great Western Railway, he wrote,¹ broke entirely new ground, and at present commanded this position, having "already sent forth branches which embrace nearly all that can belong to it." It could, he added, "have no connection with any other of the main lines," and the principal branches likely to be made could not "be dependent upon any other existing lines for the traffic which they will bring to the main trunk." Such were the narrow limits assigned in 1838 by the famous engineer of the Great Western Railway to a company whose system now covers a wider area than that of any other English railway, and is in contact with rivals in almost every part of it.

The change of gauge introduced upon the Great Western Railway was adopted by the company without express sanction by Parliament. It has been seen that in the earliest Railway Acts the width between the rails was taken for granted or was left to be fixed by promoters. In 1834, however, a clause prescribing the gauge was generally inserted in each Act. Mr. Brunel has himself explained how it was that such a clause came to be omitted from the Great Western Act. In the bill rejected by Parliament in 1834, the gauge was fixed, as usual, at four feet eight and a half inches. But, having the seven feet gauge in his mind, he made great efforts to procure the removal of this restriction from the Bill of 1835, and for that purpose communicated with Lord Shaftesbury, then Chairman of Committees in the House of Lords. Fortunately, the agents were able to cite as a precedent for such an omission the case of the London and Southampton Railway Act. Mr. Brunel thereupon was allowed to have his way, and the first Great Western Rail-

¹ Engineer's Report to Directors, 1838.

way Act of 1835 left him free to adopt any gauge which he might be able to induce the directors to sanction.¹ On the Eastern Counties line a gauge of five feet was adopted, also without Parliamentary sanction.

The railway intercommunication which Mr. Brunel did not foresee, or chose to ignore, came about in 1844. Between Birmingham and Gloucester a narrow gauge line had been sanctioned by Parliament. An extension line, however, from Gloucester to Bristol was constructed, corresponding with the Great Western system. When opened in 1844 there was a break of continuity at Gloucester. The inconvenience and loss thereby sustained by traders caused much annoyance, and at public meetings the dislocation of traffic between Birmingham and Bristol and intermediate places was denounced as a national evil. Mr. Brunel, it was said, had set up in the West of England a barrier almost as effectual as the wall of China in preventing free commercial intercourse, and the interference of Parliament was loudly called for.

Meeting of
the two
gauges.

Early in the Session of 1845, the issue was raised in Parliament, with the result, at first, of increasing confusion instead of abating it. Two rival schemes for supplying railways to the West Midland district were promoted by the Great Western and London and Birmingham Companies, champions of the two gauges. The territory in dispute was worth a struggle. It included the great mining district of Staffordshire, lying south of Wolverhampton; the towns of Kidderminster, Stourbridge, Stourport and Worcester; and the district north of Oxford, intermediate between the two systems.² Both companies, therefore, put forth their whole energies in striving to acquire this territory, and both had

Competing
lines: Oxford
and Wolver-
hampton.

¹ Royal Commission upon the Gauge of Railways: Evidence of Mr. Brunel, October 25, 1838.

² Between Wolverhampton and Stourbridge there were then a hundred blast furnaces in work, pro-

ducing about 468,000 tons of pig iron annually, and consuming nearly 4,000,000 tons of coals, iron, limestone and other raw materials. (Report of Railway Department of Board of Trade, 1845.)

strong supporters. Memorials were presented to the Board of Trade, and petitions to Parliament, by manufacturers and traders on behalf of each project. Constituencies sought help from their members; all the northern railway companies threw their influence into the scale for the narrow gauge project.

Break of
gauge; new
point of
contact.

Stated shortly, the issue before Parliament was, whether the public interests would be better served by extending the broad gauge northward to Birmingham and Rugby, or by taking the narrow gauge down to Bristol and Oxford. The competing bills came before the new Railway Department of the Board of Trade,¹ for their preliminary report. "It would be difficult," they said, "to over-rate the importance of this question in a national and commercial point of view."² At the date of their report about two thousand miles of railway had been made or sanctioned on the narrow gauge, and three hundred miles on the broad gauge.³ By right of prior possession and extent of sway, therefore, the narrow gauge had strong claims. At Gloucester, where the break of gauge then interposed, there was irresistible evidence of the delay, inconvenience and loss which it occasioned upon through traffic passing to and from the north and west of England. Would it not be well to diminish these evils by confining the broad gauge system within its existing geographical limits, and so hasten the time when, as was foretold some years afterwards, the broad gauge would gradually disappear?⁴ Finding no superior advantages in the Oxford, or broad, as compared with the Tring, or narrow gauge scheme, the Board of Trade, upon

Board of
Trade prefer
narrow
gauge.

¹ Established upon the recommendation of Mr. Gladstone's Committee of 1844.

² Report of Board of Trade, February 28, 1846, paragraphs 25, 26.

³ In subsequent debates in the House of Commons the proportion was stated to be three thousand to one thousand miles, an estimate

which no doubt included lines sanctioned up to that period of the session.

⁴ "Every one must see that it is only a question of time when the broad gauge must cease to exist."—Mr. Allport, before Committee on Railway Amalgamation, 1872, p. 404.

general commercial considerations and grounds of public policy, decided in favour of the latter.¹

A storm of indignation among the numerous friends of the broad gauge system was aroused by this report. The House of Commons had already shown its usual jealousy at any attempt by a Government department to dictate to Committees upon questions differing from each other in their circumstances, and each involving questions of legislative expediency. To allay these natural apprehensions, Sir Robert Peel, at the commencement of the Session of 1845, declared that, while he thought the reports of the Board of Trade furnished useful materials for enabling Committees to form sound conclusions upon pending railway schemes, he "did not think they ought necessarily to fetter the judgment either of Committees or of the House." Some members, however, were not satisfied with this assurance, and also disliked and distrusted enquiries which were not conducted in public, were carried on without hearing the parties interested, and yet were meant to exercise, and did exercise, an important influence upon projected railways both in and out of Parliament.

Reception of report.

Sir R. Peel's explanations.

Lord Howick was the mouth-piece of these complaints in the House of Commons, where he pointed out the injustice inflicted upon railway promoters by a preliminary examination of their schemes before a tribunal which left the parties on

Lord Howick on Board of Trade enquiries.

¹ The London and Birmingham Company voluntarily offered, on condition of their Worcester scheme being sanctioned, to make the following (among other) concessions in their Act:—1, That all the railways under their control, including their main line, should become subject to the options of purchase and revision of fares contained in Mr. Gladstone's Act of 1844; 2, a revised tariff to be framed for passengers and goods upon the whole of their railways; 3, coals and iron to be carried at rates not exceeding a penny per ton

per mile, including toll and locomotive power. The Board of Trade attached much importance to the last guarantee, as they were informed that good house coals from South Staffordshire or Derbyshire could then be sold in London at 20s. per ton; whereas the price during the winter of 1844—5 had been 40s. It was estimated at this time that a saving of every shilling per ton on the coal consumption of London was equivalent to an annual saving of 150,000*l.* to consumers. (Board of Trade Report, paragraphs 66—70.)

both sides in complete ignorance of the grounds of its decisions. Vast interests were thus affected.¹ In the London and York Bill, for example, speculators had made bargains, the effect of which was that 1,200,000*l.* depended upon the fiat of the Board of Trade, and would be either added to or taken from the value of the shares if the decision were favourable or unfavourable. This was only a single instance out of many involving interests of almost equal magnitude, so that upon the decisions come to by officers in an inferior department of the Government depended sums in comparison with which those dealt with by Courts of Justice were totally insignificant. Lord Howick did not hesitate to allude to sinister whispers which had been in circulation; and though he believed them to be unfounded, he was convinced that too many of such rumours would be heard, and that a door would be opened to corruption and jobbery, if enquiries made behind the backs of parties interested were continued, and decisions laid before Parliament as though they were authoritative and conclusive.²

Committee
upon bills.

Meanwhile, the rival bills had been referred in the House of Commons to a Committee, which had for its chairman Mr. Shaw, Recorder of Dublin, a member of experience in private bill legislation, who brought a judicial mind to bear upon the important issues raised. Fortunately, Committees could now be trusted as impartial tribunals. A reform some years before adopted in the Lords, and often urged in vain in the other House, had been at length accepted there. In the Session of 1845, for the first time, Committees on railway bills were freed from all suspicion of local or personal interest, and from the canvassing and partisanship which sometimes caused their decisions to be impugned and their motives suspected. Local members were no longer allowed to serve. Each Committee was restricted

New con-
stitution of
Committees
in Commons.

¹ In 1845, 248 railway bills were lodged. The lines actually sanctioned involved an outlay of nearly

60,000,000*l.*

² 79 Hansard, pp. 140—9, and 170—85 (Feb. 5 and 6, 1845).

to five members, appointed by a Committee of Selection; and before they could attend or vote, each member was required to sign a declaration that his constituents had no local interest, and that he himself had no personal interest, in any bill or project referred to him.¹

Mr. Shaw's Committee sat for twenty-five days and examined more than a hundred witnesses. By common consent, they gave to both schemes close and impartial consideration. Their decision reversed that of the Board of Trade, and was unanimously in favour of the broad gauge line. It was now the turn of the friends of the narrow gauge to complain. On June 20, the report of the Committee was presented to a crowded House, and Mr. Cobden undertook to give reasons for its rejection. This struggle between the two systems in the Midland Counties, he said, was extending to Somerset, Wilts and Dorset; and in all these districts the question of gauge was one of paramount importance. The country had fifteen years' experience of the narrow gauge, and there could be no question of widening it; to do so, would require widened tunnels, viaducts, embankments, and bridges, at a cost which rendered these changes practically impossible. On the other hand, no such alterations would be required to turn broad into narrow gauge lines. In all probability men then living would see railways wherever turnpike roads existed, and he insisted strongly that a uniform gauge was a national necessity.²

Decision of
Committee.

Debate and
division in
House of
Commons.

There was a long debate, and arguments were used which

¹ Twenty-two resolutions regulating private bill procedure were proposed. Many objections were taken to those forbidding local members to serve on committees when bills affected their constituents; but with so much private legislation before the house there was urgent need for limiting the number of members on committees, and all the resolutions were agreed to. (78 Hansard,

pp. 271—308; March 4, 1845.) This reform only applied to railway bills, and only to those of the session. Such a step once taken, however, was not likely to be retraced, and the same rule was soon extended to all opposed private bills. (See *post*, chapter on Procedure in Committees.)

² 81 Hansard, pp. 972—6 (June 20, 1845).

are rarely ineffectual on such occasions. If, it was said, the House allowed a decision given by one of its Committees, after prolonged and careful enquiry, to be defeated by the votes of members who had been canvassed to attend the debate, but could not have made themselves acquainted with the merits of the case, a great blow would be struck at the authority of a now impartial tribunal. Though his constituents favoured the narrow gauge, Sir Robert Peel supported on these grounds the decision of the Committee, which was adopted, on a division, by 247 to 134 votes.¹ It may be added here that a Committee of the House of Lords were also unconvinced by the arguments used in the Board of Trade's report, and approved of the broad gauge scheme, which accordingly obtained the Royal assent.

Committee in
Lords.

Royal Com-
mission on
railway
gauge.

Although it upheld the report of its Committees, Parliament felt that the issue was still unsettled. On the motion of Mr. Cobden and of Lord Dalhousie, both Houses, therefore, concurred in an address to the Crown for a Royal Commission; and three men of great scientific attainments, Sir Frederic Smith, R.E., Sir G. B. Airy, the Astronomer Royal, and Mr. Peter Barlow, C.E., were appointed "to enquire whether, in future private Acts of Parliament for the construction of railways, provision ought to be made for securing a uniform gauge; whether it would be expedient and practicable to take measures to bring the railways already constructed, or in progress of construction, in Great Britain, into uniformity of gauge; and whether any other mode could be adopted of obviating or mitigating the evil" arising from a break of gauge.

Mr. Brunel's
reasons for
adopting a
broad gauge.

Mr. Brunel was naturally one of the many witnesses examined by the Commissioners; and it is of interest to see his reasons for thinking, in 1834, that the standard gauge then in use was insufficient. "Looking," he said, "to the speeds which I contemplated would be adopted on railways,

¹ 81 Hansard, p. 979 (June 20, 1845).

and the masses to be moved, it seemed to me that the whole machine was too small for the work to be done, and that it required that the parts should be on a scale more commensurate with the mass and the velocity to be attained.”¹ He made light of the difficulties arising from a break of gauge. It might be remedied by a third rail. Passengers would take care of themselves. Coals could be shifted in moveable iron boxes. “The worst that could happen would be the entire unloading and reloading of goods. Even that does not amount to anything in time or money that would be much felt by the public.”² In January, 1842, a Railway Clearing House³ had become necessary to adjust accounts arising from the immense interchange of traffic between railway companies, their through rates and through bookings, and the passage of rolling stock from one line to another. The existence and complicated work of this great organization gave powerful support to all arguments for uniformity. There was an overwhelming array of evidence on the side of the narrow as the standard and uniform gauge in this country.

Railway
Clearing
House.

The report of the Gauge Commissioners appeared in January, 1846. Rejecting all the mechanical contrivances suggested with a view to mitigate the evils of a break of gauge, the Commissioners were of opinion (1) That as regarded the safety and convenience of passengers, no decided preference was due to either gauge, though on the broad gauge the motion was generally easier at high velocities; (2) that in respect of speed the advantages were with the broad gauge, though there would be danger in attempts to attain higher speed except on lines better consolidated and more substantial than those then existing; (3) that as to the transport of goods, the narrow gauge was more convenient and better suited for general traffic; (4) that the greater cost

Report in
favour of
narrow
gauge.

¹ Gauge Commission, evidence of Mr. Brunel, October 25, 1845.

² *Ib.*, Question 4,049.

³ The Railway Clearing Act, 1850 (13 & 14 Vict. c. 33), enabled the

Committee of the Clearing House to sue and be sued for balances declared by them in favour of or against any railway company.

of constructing a broad gauge line caused no corresponding reduction subsequently in maintenance of way, cost of locomotive power, or other annual charges.

On these grounds the Commissioners were of opinion that the narrow gauge should be preferred for general use, especially as there were then in work only 274 miles of railway on the broad, against 1,900 on the narrow gauge system. A change from broad to narrow gauge, including the alteration of locomotives and rolling stock, would not, the Commissioners believed, cost over a million sterling. They did not recommend that this outlay should be defrayed from public funds, nor did they think that the broad gauge companies could be called upon to incur such an expense themselves, or even the expense of laying down a third rail, inasmuch as they had made all their works with the authority of Parliament. The continued existence of the two gauges, therefore, seemed inevitable. But with this tacit reservation of broad gauge lines then working, the Commissioners distinctly recommended that the narrow gauge should be made compulsory on all railways then under construction or afterwards to be constructed in Great Britain.

Cost of
changing
broad to
narrow
gauge.

Gauge of
Railways
Act, 1846.

Victory appeared now to rest with the narrow gauge. Parliament passed an Act, based on the recommendation of the Royal Commissioners, prohibiting the construction of any railway for the conveyance of passengers on any gauge other than four feet eight inches and a-half in Great Britain.¹ But the Act contained exceptions which rendered it of little value. It was not to apply to any railway of a gauge specially defined in the authorizing statute, so that, in practice, Select Committees, within certain districts defined in the Act,² might still sanction broad gauge lines. Various railways already sanctioned, but not yet constructed, were also excepted, including the Oxford and Rugby, and Oxford, Worcester, and Wolverhampton lines, which had been added to the broad gauge domain after the hard fight of 1845. Parlia-

¹ 9 & 10 Vict. c. 57.

² South of the Great Western

system, or in the counties of Cornwall, Devon, Dorset or Somerset.

ment saw the injustice of forcing the broad gauge companies to undo, at an enormous expense, what it had expressly authorized them to do. But the Act of 1846 went beyond a recognition of existing interests; and by a want of courage in allowing broad gauge extensions, after the system had on public grounds been condemned, Parliament added materially to the difficulties and the cost of railway communication in England. It had failed even yet to learn that the great trunk lines could not remain independent of each other, and isolated in their respective districts.

The subsequent history of the different gauges may now be rapidly traced. In Ireland, the Royal Commissioners recommended a six feet gauge, and the Ulster railway was so constructed and worked. It was afterwards altered to the standard gauge of five feet three inches, prescribed in Ireland, as a compromise, by the Act of 1846; and the expense of alteration was shared between the company and its neighbours. All the other Irish railways were made five feet three inches wide, so that they at least enjoyed the advantage of uniformity.¹ The Eastern Counties line was constructed as far as Colchester on a gauge of five feet, but the mistake was seen and boldly met by a change to the ordinary gauge. The Blackwall line was similarly dealt

Gauge in
Ireland.

Eastern
counties and
Scotland.

¹ The cost of constructing the Irish railways upon this compulsory and wide gauge was considerably increased, though the prospects of traffic were much less in comparison with the English narrow gauge lines. As some compensation, however, advances were made to Irish railway companies from the Consolidated Fund to aid in completing their lines. In 1865 the sum so lent was 3,899,000*l.* Of this principal sum, up to June, 1883, 2,507,000*l.* had been repaid with interest; 25,000*l.* had been remitted or written off; 1,367,000*l.* was outstanding, of which 76,000*l.* was

overdue. Besides these arrears and loss of principal, 13,000*l.* of interest had been lost, and 59,000*l.* was in arrear. (Treasury Minute, June 11, 1883.) The maximum rate charged for these loans was five per cent. At the request of Irish members, this rate has since been reduced, and interest at four per cent. is now charged. Between 1833 and 1837 advances were made to the Ulster Canal Company amounting to 120,000*l.* The whole of this principal sum is now outstanding, with 198,000*l.* of interest. (Public Works Loan Board Report, 1882-3.)

with. Some Scotch lines were constructed on a gauge of five feet three inches, but were altered for the same reason.

Increase of
railway inter-
communica-
tion.

Broad gauge
lines in 1867.

Royal Com-
mission, 1867.

Gradual con-
version of
broad into
mixed and
narrow
gauge.

Meanwhile, intercommunication between the two systems of railway had greatly increased. In 1845, Gloucester was the only place at which the broad gauge joined the narrow gauge and a transfer of traffic occurred; in 1867, there were 26 such places.¹ Instead of the seven hundred miles of broad gauge laid down in 1845, there were 1,450 miles in 1867. By that time the necessities of their traffic had compelled the railway companies owning broad gauge lines to provide rails for narrow gauge traffic on 387 miles of their system. There remained, in 1867, of exclusively broad gauge lines, 1,069 miles, "presenting numerous points which formed the frontiers" of the two systems, and at which "great difficulty and expense were caused in the interchange of traffic," and "a positive bar was interposed to some classes of traffic."²

The Royal Commissioners who reported on railways in 1867, were of opinion that the continued existence of the double gauge was "a national evil;" and they thought it worthy of consideration whether, as this evil had "arisen to some extent from the proceedings of Parliament," a loan of public money should not be granted to defray the cost of putting an end to the broad gauge. Since that period the diversity of gauge has been much lessened, and delay or hindrance to traffic has been almost entirely removed, by the Great Western Company themselves, without any help from the State. For many years their system has been in process of gradual conversion from broad to mixed, from mixed to narrow, and from broad to narrow gauge. The results of this process are shown in the following statement, which

¹ Report of Royal Commission on Railways, 1867, p. 29.

² *Ib.* p. 86. In 1867 the chairman of the Great Western Company estimated the cost of altering broad

to narrow gauge, including permanent way and part of the rolling stock, at 2,000,000*l.*, double the estimate of 1846.

gives the number of miles of line on the various gauges now maintained on the Great Western system :—¹

	Miles.
Broad Gauge Lines	188
Narrow „ „	1,813
Mixed „ „	244

It is clear from these figures that the principle of the survival of the fittest is gradually making way ; and diversity of gauge in England, the keen struggles to which it gave rise, and the enormous waste of money it occasioned, are now little more than matter for history.²

While the great trunk railways and their net-work of branches have thus been assimilated in gauge, a future seems to be arising for subsidiary lines of narrower gauge which, whether in the form of “light railways,”³ of steam tramways, or lines suited for steep gradients in sparsely populated and hilly districts, serve the local traffic cheaply, and are useful feeders to railways. To the last class belongs the Festiniog railway, well-known to most tourists in Wales, a single line about 16 miles long, with a gauge of one foot eleven inches and three-quarters. It was originally constructed as a tram road for the conveyance of slate from quarries near Festiniog to Port Madoc.⁴ In 1869 the Com-

Subsidiary
narrow
gauge lines.

Festiniog
Railway.

¹ For this return, which extends to March, 1884, and is exclusive of joint lines, I am indebted to the courtesy of the General Manager of the Great Western Railway, Mr. Grierson.

² In India the earlier railways were constructed upon a prescribed gauge of five feet six inches ; but the greater economy of constructing and working narrower lines led Lord Mayo and his Council, after much controversy, to sanction a metre gauge of 3 feet 3 $\frac{3}{8}$ inches. Out of 12,655 miles of railway worked or sanctioned in 1883, 1,743 miles were on the metre gauge. Two short lines of 40 and 50 miles length are

made on gauges of 2 feet and 2 feet 6 inches. Nearly all the chief railways in India have been constructed by companies incorporated by English statutes.

³ This term is employed in Part V. of the Regulation of Railways Act, 1868, which authorizes the Board of Trade to license railways for light traffic, worked at a maximum speed of 25 miles an hour.

⁴ The loaded waggons came down the steep gradients to Port Madoc by gravity, and were then drawn back to the quarries by horses, which rode as passengers in the descending train. In 1864 locomotive power was used.

pany obtained powers¹ to carry passenger traffic. Similar powers have been acquired in the same district for lines on a two feet gauge.²

"Light"
railways.

Gauge of
tramways.

Light railways have not yet been sanctioned in England except of the standard width.³ In Ireland these railways are made on a three feet gauge. Parliament, in 1870, left the gauge of each tramway to be settled by the special Act authorizing it; but if the Act were silent, the gauge was to be of four feet eight and a-half inches.⁴ A Committee of the House of Lords in 1879 recommended that, in legislation respecting tramways, "no preference should be given to one gauge over another," but that their width should be "settled freely, according to the circumstances of each case." Tramways of three feet and three feet six inches gauge have been lately sanctioned; and in agricultural districts and elsewhere, the use of steam has been allowed on tramways, even when laid by the side of highways.⁵ The accommoda-

¹ 32 & 33 Vict. c. 141. The Company's original Act was 2 Will. IV. c. 48.

² See "Port Madoc, Croesor and Beddgelert Tram Railway Act, 1879," giving further powers to a company incorporated in 1865. In 1872 the London and North Western Railway Company were authorized to make a line, 12 miles in length, from their station at Bettws-y-Coed to Festiniog, upon a gauge of 1 foot 11½ inches, with a view to a junction with the Festiniog line. In 1872, also, the North Wales Narrow Gauge Railways Company were authorized to construct 34 miles of line on a 2 feet gauge. (35 & 36 Vict. cc. 85, 87.) In both these cases alternative powers were taken to increase the gauge to 4 feet 8½ inches.

³ But the Southwold Railway, 8½ miles long, is on a gauge of three feet.

⁴ Tramways Act, 1870 (33 & 34 Vict. c. 78, s. 25).

⁵ Three examples of rural tramways may be given. One of these,

running by raised rails laid along the highway, between Wantage and the Wantage Road Station of the Great Western Railway, was constructed under a Provisional Order obtained in 1874. It is of the ordinary gauge, may convey "passengers, animals, goods, minerals, parcels and mail bags;" and in 1876 was authorized by Provisional Order to use steam or other mechanical power. In 1880 a tramway about 8 miles long, and of 2 feet 6 inches gauge, was authorized, starting from a point near the Great Northern Railway Station at Alford, in Lincolnshire, and running along the highway through two villages to Sutton-le-Marsh, on the coast. The company are allowed to use animal or (with the consent of the Board of Trade) steam power, and may carry minerals and goods as well as passengers. This line was opened for traffic in 1884. By Provisional Order in 1881, 24 miles of steam tramway on a 3 feet 6 inches gauge were

tion thus afforded is generally ample for rural districts.¹ At the same time, as brooks feed the river, so a valuable source of traffic is brought to railways by these tributaries. A transshipment of goods or produce is necessary, but the stream of traffic is so small that no great public inconvenience is occasioned. On the other hand, railways are made to villages which otherwise could hope for no such accommodation.

Many provisions in the early Railway Acts were borrowed from the legislation upon canals, as these in turn had borrowed from the still earlier legislation for river improvements. Such were the provisions authorizing the compulsory taking of land, the sale of parts of entailed estates for the purposes of the undertaking, and the investment of the purchase-money. The toll clauses were also in substance the same.² So were the capital powers.³ The amount of loan capital varied; by degrees the borrowing powers of companies were limited to one-third of the share capital. In the Liverpool and Manchester Railway Act of 1826, and other Acts of that period, Parliament insisted that the whole of the share capital should be subscribed before the Company attempted to exercise any of the powers conferred upon them; and landowners whose property was scheduled might demand to see a certificate to this effect, given by a county magistrate, upon evidence furnished by the Company.⁴

Provisions in early Railway Acts.

Capital powers.

No specific rates for passengers carried by the Company were prescribed in the Liverpool and Manchester Act. If the Company acted as carriers they were authorized to make, "for all persons, cattle and other animals, such reasonable charges" as they should from time to time determine. If

Passenger fares.

sanctioned for general traffic, on the roads between Lincoln and Brigg, under the title of the Lincolnshire Tramways.

¹ Lords' Committee of 1879; Evidence of Mr. Oakley, of the Great Northern, and Mr. Allport, of the Midland Railways.

² Besides the mileage rates; additional charges were usually authorized for haulage by fixed engines at inclined planes.

³ The earliest Canal Acts gave no authority to borrow money. These powers were first conferred in 1770.

⁴ 7 Geo. IV. c. 49, ss. 73, 76.

Conditional
reduction of
rates.

Stations.

Use of loco-
motives
restricted.

Onerous con-
ditions im-
posed by
landowners.

passengers were conveyed upon the line by other persons, the Company's charge for each was fixed at eighteenpence for any distance not exceeding ten miles; two and sixpence for distances between ten and twenty miles; and four shillings for any distance over twenty miles. In this and subsequent Acts Parliament provided that the maximum tonnage rates for goods should abate at the rate of five per cent. for each one per cent. of dividend exceeding ten per cent. upon the paid-up capital. No provision was made for building stations; these seem to be a later development of the toll-houses which companies were authorized to erect. On a line sanctioned in 1824, and now forming part of the North British system, the making of stations was left in the hands of the landed proprietors along the line. If after receiving six months' notice, they failed to provide stations, the company might then furnish this accommodation.¹

In some instances railway companies were forbidden to use any "locomotive or moveable engines" without the written consent of the owners and occupiers of lands through which their lines passed.² Some Scotch landowners exacted very onerous conditions. One laird, in 1826, insisted that, at each end of the railway passing through his lands, iron gates should be put up, with a lodge for a porter who was "to keep out all intruders." He also required that locomotives

¹ 5 Geo. IV. c. 49, ss. 83, 84 (Palace Craig and Kirkintilloch Railway Act, 1824). The word "stations," in the sense in which it is now used, does not appear to have been then known, and is not found in the Acts of this period. The company took power to erect toll-houses; the land-owners were authorized to build "wharfs or depôts, cranes, weigh-beams or warehouses" upon their land adjoining the railway. The sections cited also authorized them "to make and use proper and convenient places for waggons, carts and other carriages to lie and turn

in and face each other, so that the making or using thereof do not obstruct or prejudice the passage of the said railway." This was the old equivalent for sidings. The landowners were to be at liberty to charge specified rates and tolls for the use of these depôts and conveniences. (Sects. 83—86.) See also *post*, p. 170 *et seq.*, as to station terminals. The North British Company has absorbed this and forty-five other companies.

² Heckbridge and Wentbridge Railway Act, 1826 (7 Geo. 4, c. 46, s. 7).

should not pass without his written consent. Provisions to this effect were embodied in the Act; and he and other owners, besides receiving ample compensation for the value of their land, levied tonnage rates, as a way-leave upon goods and minerals passing over it.¹ In those days many landowners resented any invasion of their estates, and stoutly opposed all attempts to survey it by railway engineers and their assistants, who in turn sometimes met force with force or strategy.² Landowners, in short, were no wiser than the traders, who thought it would be a disadvantage if a railway

¹ Edinburgh and Dalkeith Railway Act, 1826. It would be invidious to quote here the names of these owners, who showed no greater prejudice and greed than many landed proprietors on this side of the border, though the latter usually shrunk from any record in the statute book. Among many other instances of large sums extorted really to buy off opposition, but nominally for land and severance, is one in which 120,000*l.* was obtained for a strip of purely agricultural land, five or six miles long; with interest for two years in addition, owing to delays caused by the company's fruitless efforts to escape from a bad bargain. In another, 200,000*l.* was agreed to be paid for land and interference with amenities, though the line would have passed six miles from the owner's mansion. To save this expenditure the company proposed, in a subsequent bill, to avoid the estate; but though the owner had strenuously objected to the taking of his land, he then objected still more strenuously to the proposal not to take it. Other less familiar and more agreeable incidents are the voluntary return to railway companies by the Duke of Bedford of a sum of 150,000*l.* paid for compensation, as he found the

railway had benefited his estate; and by Lord Taunton of 15,000*l.* out of 35,000*l.*, because his property had not suffered the full injury which was contemplated when part of it was taken.

² In one instance the survey was completed at night by the aid of dark lanterns. In another, an extremely unfair advantage was taken of a clerical landowner, whose land was surveyed while he was preaching and his watchers were dutifully listening to the sermon. In some cases there were serious affrays with "navvies" on one side, and on the other gamekeepers and farm labourers; occasionally the invaders were captured and placed ignominiously in the lock-up. George Stephenson told the Commons' Committee on the Liverpool and Manchester Bill, in 1825, that he had been threatened with ducking in a horse-pond if he proceeded with the survey. He and his assistants were watched day and night; and, to frighten them off one estate, guns were discharged at intervals to show that the garrison were on the alert. Upon the land of dissentient owners great part of the survey was made "by stealth, at a time when the watchers were at dinner."

Brighton
Railway
Bill, 1832;
landowners'
opposition.

were brought to their towns.¹ The time was to come when both would entreat that railways should be made, in order to increase the value of their estates,² or rescue the trade of their towns from decay. Even six years later, in 1832, the London and Brighton Railway Bill, after passing the House of Commons, was rejected by a committee of peers, without hearing the opponents, because the promoters had not "made out such a case as would warrant the forming of the proposed railway through the lands and property of so great a proportion of dissentient landowners and proprietors."

Railway
communica-
tion with
Scotland and
Ireland.

A keen struggle occurred between rival projectors to obtain possession of the trunk lines between London and Dublin, and London and Edinburgh. Parliament also recognized that it was a point of national importance to secure the best possible means of communication between the various parts of the United Kingdom. In August, 1839, the House of Commons adopted an Address to the Crown, praying for an inquiry by competent persons into the relative merits of the six lines then proposed to quicken the communication between London and Dublin.³ A similar inquiry was instituted by the Government as to the best line of railway between London and Edinburgh. The former inquiry was necessarily directed to ascertain not only the line of railway which offered the greatest facilities of communication with Ireland, but the most suitable harbour. In 1832, there had been a proposal to convey the mails to Dublin *viâ* Liverpool, as that town had the advantage of railway communication with London, at that time wanting in Wales.⁴ The plans prepared, however, prior to and during the year

Dublin *viâ*
Liverpool.

¹ Many towns throughout the kingdom insisted that railways, like canals, should be made at some distance from them.

² The valuation rolls of Midlothian, Peebles, Selkirk, Roxburgh, East Lothian and Berwick showed an average increase of thirty per cent. of rent between 1862 and 1877; while during these fifteen years the ordinary shareholders of the North

British Railway received an average of only one per cent. per annum. (Com. Committee on Railway Rates, 1882; *ev.* of Mr. Walker, p. 31, who there attributes to railways much of the improved value of land in Scotland.)

³ Hansard, August 12, 1839.

⁴ Com. Committee on Post Office communication with Ireland, 1832.

1840, for the construction of railways through Wales, indicated that route as the shortest and best. Telford's suspension bridge across the Menai Straits, an engineering achievement of the first rank, was opened in January, 1826, and supplied what was then thought to be an available means for the passage, not of heavy locomotives, but of the carriages and waggons composing the train, a second locomotive upon the Anglesea side taking on the train when conveyed in sections across the bridge by horse power or by stationary engine.¹ This was Robert Stephenson's first proposal in connection with his Chester and Holyhead scheme.

Menai Straits.

While Holyhead had obvious advantages through its nearness to Ireland, and as the existing mail route, its claims as a harbour and advantageous railway terminus were disputed on behalf of Porthdynllaen and Orme's Head, both of which were chosen as the termini of lines competing with the Holyhead route. At the instance of the House of Commons, therefore, Commissioners were appointed by the Admiralty to report upon the relative capabilities of the three harbours just mentioned.² As a packet station for steamers of a large class, and as a harbour of refuge, a strong case was admittedly made out in favour of Porthdynllaen; but, upon the whole, Holyhead was preferred by the Commissioners as being nearer to Ireland and more convenient for the packets then running between Holyhead and Kingstown.

Holyhead and its rivals.

The way was so far, therefore, cleared for the Chester and Holyhead line; but the difficulties put into the way of the first railway projectors by the rules of Parliament as well as by the prejudices and cupidity of landowners were unbounded. In 1840 the Standing Orders of the House of Commons required that, while in the case of ordinary bills for constructing works the usual notices should be given in October or November, in the case of railway bills these

Chester and Holyhead line.

Standing Orders in 1840.

¹ Commons' Committee on Private Business, 1840, Third Report; evidence of Lieut.-Col. Sir Frederic Smith, R.E., pp. 13, 14.

² Report to the Admiralty by Rear-Admiral Sir James Gordon and Capt. Beechey, R.N., 1840.

notices should be published "twice in the month of February and twice in the month of March," and the plans deposited at the same period. These notices and plans referred, not to a railway bill for which sanction was sought in the Session then pending, but to a bill to be introduced in the following Session. The professed object of the Standing Orders was to give ample time for the consideration of railway bills by landowners and opponents, to check immature projects, and ensure completeness in such measures when eventually brought before Parliament.¹ In practice, however, the effect of the Standing Orders upon promoters was most inconvenient. At the time when it became necessary to make the survey the ground was often covered with snow; engineers were engaged in preparing for the Parliamentary campaign then just beginning; surveys consequently were almost always hasty and crude; and during the autumn it was necessary to have re-surveys, frequently involving deviations in the course of a proposed line.

Difficulties in
complying
with Standing
Orders.

Imperfect
surveys.

In the scramble between rival railway projectors at this period, each desirous to be first in the field, or at all events abreast of other competitors, imperfect surveys under the difficult conditions just explained became a source of chronic complaint in Parliament. The Commissioners appointed by the Treasury in 1839 found that this objection applied in a greater or less degree to all the six lines then proposed for completing railway communication from London to the Welsh coast.² Conclusive proof on this point was supplied in July, 1840, when the promoters of the Chester and Holyhead line requested indulgence for the plans and sections which should have been forthcoming in March and February. They had published the usual newspaper notices, but had found it impossible to produce the plans and sections by the time fixed

Plans and
sections not
ready.

¹ Commons' Committee on Private Business, 1840, First Report; Minutes of Evidence, p. 36.

² Commons' Committee on Private Business, 1840, Third Report; evidence of Sir Frederic Smith, pp. 10, 11.

in the Standing Orders, and sought to be allowed to deposit them in November with a view to the introduction of their Bill in the Session of 1841. As they had secured a report in favour of their line from the Commissioners appointed to consider all the competing projects, they appear to have thought their claim a strong one. But the Committee to whom the case was referred were of opinion, after hearing evidence, that "the recommendation of a projected line of railway by Government Commissioners was not in itself sufficient to entitle the promoters of a line so recommended to an exemption from the Standing Orders generally applicable to Railway Bills," and declined to advise any relaxation of these orders in favour of the Chester and Holyhead line.

Indulgence
refused.

The Bill was not ultimately passed until the year 1844. It was then found that the engineers responsible for the safety of Telford's suspension bridge did not approve of its use for railway purposes. Parliament therefore passed the Bill for the line from Chester to Holyhead, leaving a gap in the communication across the Menai Straits to be filled up by the subsequent construction of the necessary link. In the following year this link was supplied, and the result was the tubular bridge across the Menai Straits, an enduring monument of the inventive genius and fertile resources of Robert Stephenson.

Chester and
Holyhead
Act.

From the beginning of the century until the year 1824, an average of one Act a year passed for the construction of new railways, though there were several amending statutes applicable to lines already sanctioned, and chiefly intended to relieve existing companies from financial difficulties. In the years 1825-6, eighteen new railways were authorized. There were about five in each subsequent year until 1836, when statutory powers were obtained for the construction of twenty-nine, and in the following year for the construction of fifteen new lines. In 1838, 490 miles of railway were open for traffic in England and Wales, and about fifty miles in Scotland; the cost of constructing these lines amounted to

Railways
sanctioned
and made,
1801-43.

13,300,000*l*.¹ A re-action followed from what afterwards appeared the small excitement of 1836-7. It seemed that railway enterprise had almost expended itself. Of new projects brought forward there were few, while there were numerous amending Acts seeking further time for the completion of lines, or larger capital powers; and speculators were deterred by finding how greatly almost every railway exceeded its estimated cost. Still, progress had been made; for the length of railways authorized by Parliament at the end of the year 1843 was 2,390 miles, of which 2,036 had been opened for traffic; and the capital of these lines amounted to 82,800,000*l*., of which about 66,000,000*l*. had been raised.² In 1844, notwithstanding a large excess in the estimated cost of construction, the revenue of the leading lines showed far more than a proportionate increase in revenue. The Liverpool and Manchester, Grand Junction, London and Birmingham, and York and North Midland Companies paid dividends of from ten to twelve per cent., while the fortunate shareholders in the Stockton and Darlington Railway divided fifteen per cent.³

Profits of
railways,
1844.

New projects. When these large profits became known, shares in most railway companies rose to high premiums, and new projects were at once devised, either to open up new districts, or to share the gains from traffic on main routes, by means of lines more or less competitive. Existing companies, on the other hand, made strenuous efforts to hold possession of the ground already allotted to them. First, they alleged vested

¹ Royal Commission on Railways, 1867, p. 9.

² *Ib.* p. 10.

³ It was the passenger traffic which chiefly accounted for these results. On the Liverpool and Manchester line, according to the directors' first report, the revenue from this source had been estimated at 10,000*l*. for the half-year. It was, in fact, 100,000*l*., while the

revenue from goods and coals, estimated at 50,000*l*. and 20,000*l*., was only 3,000*l*. and 1,000*l*. The cost of working, expected to be 33 per cent. on the gross receipts, was 62 per cent.; the cost of construction rose to 1,200,000*l*., instead of 510,000*l*., the first estimate. But a dividend of .8 per cent. was paid, and the 100*l*. shares rose to 200*l*.

interests, insisting that their capital had been spent upon the implied condition that Parliament had granted them certain rights which were not to be taken away, even in part, by similar concessions to competitive undertakings,¹ except upon clear proof of neglect or inability to accommodate the traffic. They did not, however, rely wholly upon this defence, but wisely prepared a second line of entrenchments, on which they might fall back, and asked Parliament to sanction branches, subsidiary to their main lines, or railways intended chiefly to block out intruders. Possession, and a command of almost unlimited resources, gave to existing companies great power in the Committee rooms, but Committees were not always swayed in their favour, and sometimes, indeed, sanctioned competing lines as the best remedy against threatened monopoly. The result was that, in the year 1844 alone, some fifty new lines, more than 800 miles long, were approved by the Legislature, with capital powers amounting to twenty millions and a half. Thus one year produced an authorized mileage and outlay exceeding that of all the railways completed during the first forty years of the century.

Defence of
vested
interests.

New lines in
1844.

This was only an instalment of the mass of projects which Parliament was asked to consider. The story of the madness which then seized upon all classes lives in satire as well as in the sober history of the time, and need not be repeated here.² Its results in railway legislation were remarkable.

Railway
mania of
1845-7.

¹ This plea derived considerable weight from a passage in the Report of the Commons' Committee of 1844, who recommended that Parliament should "take no step which should induce so much as a reasonable suspicion of its good faith with regard to the integrity of privileges already granted, because one of the elements of encouragement to future undertakings was just and equitable dealing with those already established; and that at the same time

nothing in the shape of a vested interest (by which the Committee mean an interest and claim over and above positive enactments, for some restraint of general principles in favour of the party) ought to be recognized by Parliament as attaching to existing railways."

² Two Parliamentary papers, issued in 1846, give the names and addresses of all subscribers to the railway schemes of 1845 for amounts above and below 2,000*l.*, with the

Schemes of
1846.

In 1845, 248 plans were submitted, and 118 sanctioned by Parliament, for 2,700 miles of railway, with capital powers of fifty-six millions. Before the next session opened, plans for 815 new lines had been lodged at the Board of Trade, involving the construction of 20,687 miles of railway, with capital powers of not less than 350,000,000*l*. Some of these projects soon proved abortive, but more than seven hundred railway bills were deposited at the Private Bill Office.¹ After immense labour in considering them, Parliament dismissed many of these bills, but sanctioned 270 new lines, 4,538 miles long, with a capital of 132,600,000*l*. In 1847, statutory powers were given for making 190 new lines, 1,354 miles long, with a capital of 39,460,000*l*.

Railway
Abandonment
Act, 1850.

Financial disaster was the natural result of this excessive speculation. At the end of the year 1847 a general Act was passed² extending the time for making certain railways. But this relief was insufficient, and in 1850 another Bill became law "to facilitate the abandonment of railways and the dissolution of railway companies." This Act enabled companies to abandon the whole or portions of their undertaking, and released them from the conditions under

exact sums for which they were responsible. The return for sums under 2,000*l*. included upwards of twenty thousand names, presenting some remarkable contrasts: "peers and printers, vicars and vice-admirals, spinsters and half-pay officers, members of Parliament and special pleaders, professors, cotton-spinners, cooks, Queen's counsel, attorneys' clerks, college scouts, waiters, excisemen, Catholic priests, coachmen, bankers, beersellers, butlers, domestic servants, footmen, mail-guards, and a multitude of other callings." Annual Register, 1846, p. 12.

¹ Speech of Sir Robert Peel, January 26, 1846; 83 Hansard, p. 190. The deposits for English railways

alone amounted in 1845 to three millions, and in 1846 to nearly eleven millions and a half.

² 11 Vict. c. 3, which received the royal assent, December 20, 1847. It provided that within two months after the passing of the Act, companies desiring further time for the completion of works or the purchase of lands might apply to the Commissioners of Railways, who were authorized to enlarge the period limited for these purposes in the special Acts. During the crisis of 1847, railway companies, in order to pay their contractors, were obliged to raise money at from ten to thirty, and in some instances, it is said, even at fifty per cent. discount.

which their powers had been conferred.¹ Of the 8,590 miles of railway sanctioned in the three Sessions (1845-7), no fewer than 1,560 miles were abandoned by the promoters under the authority of the latter Act.² But 2,000 miles of railway, requiring forty millions of capital, were abandoned without the consent of Parliament.³ Twenty years after this collapse the speculative fever broke out again, and its results were not less disastrous.⁴ In 1865 the aggregate amount

¹ Abandonment of Railways Act, 1850 (13 & 14 Vict. c. 83).

² Royal Commission on Railways, 1867, p. 17.

³ Report of Mr. Cardwell's Committee of 1853. Between 1845 and 1847 the shares in ten leading railway companies had suffered a depreciation of value estimated at 78,000,000*l*. In July, 1845, the 100*l*. shares of the London and North Western (then the London and Birmingham) stood at 243*l*.; on April 4, 1848, they were 126*l*.; the Great Western shares (80*l*. paid up) were at these two periods respectively, 205*l*. and 88*l*.; the Midland 100*l*. shares, 187*l*. and 95*l*.; London and Brighton 50*l*. shares, 76*l*. and 28*l*. 10*s*.; Lancashire and Yorkshire (70*l*. paid), 173*l*. and (82*l*. paid) 69*l*.

⁴ On May 11, 1866, the Governors of the Bank of England informed the Chancellor of the Exchequer that they had that day made advances to the "unprecedented" amount of more than four millions sterling. Replying on the same day, Earl Russell and Mr. Gladstone referred to the "extraordinary distress and apprehension," amounting to "absolute panic," which then prevailed in the City. The crisis, they thought, differed from those of 1847 and 1857, as "those periods were periods of mercantile distress, but the vital consideration of bank-

ing credit does not appear to have been involved in them, as it is in the present crisis." Again, the shock to credit, instead of being "comparatively slow and measured," had "in this instance arrived with intense rapidity." In order, therefore, to avert calamities which might threaten trade and industry, the Government, as in 1847 and 1857, sanctioned a suspension of the Bank Charter Act, authorizing the Bank, in case of necessity, "to extend their discounts and advances upon approved securities" by means of note issues beyond the legal limits. No such discount or advance, however, was to be granted at a rate of interest less than 10 per cent.; and the Government reserved the power of recommending a higher rate. After a fair allowance to the Bank for its risk, expense and trouble, the profits of these advances were to belong to the public. Acting in conformity with this letter, the Bank, on May 12, raised the rate of discount to 10 per cent., a rate which lasted until August 17. Owing to the bank failures and the panic, English credit at this time fell so low abroad that the Foreign Office issued a circular intended to allay suspicion, and explaining the difference between scarcity of money and insolvency.

of share and loan capital proposed to be raised by the railway and other bills then introduced into Parliament was 126,440,000*l.*; and in the following Session 175,490,000*l.*¹

Schemes of
1845.

Of the 248 Bills for which plans and sections were deposited in the Session of 1845, twenty-five related to the London and York district; eighteen to Scotland; twenty-two to Ireland; twenty-seven to Lancashire; fourteen to the Metropolitan district; seventeen to the Kentish and South Eastern district; and twenty-two to Norfolk. Among the Metropolitan schemes which were before their time was a London and South Western extension to Hungerford Bridge; a South Eastern extension to the same point; a Metropolitan Central Junction scheme; and an Eastern Counties extension to Finsbury. In 1845 the plans and sections of all Railway Bills were deposited with the Railway Department of the Board of Trade, which reported upon each scheme. From this cause much delay occurred in the consideration of Bills, as it was necessary that Committees should have before them these reports, which sometimes were not ready when the Committees met.² Owing also to the pressure of business in 1845, resolutions were passed by both Houses of Parliament giving special privileges to parties wishing to re-introduce, in the next Session, Railway Bills, which, having been advanced to a certain stage, could not be passed from want of time.³ These privileges were confined to the case of Bills so far advanced that they were reported and ordered to be ingrossed. Upon preliminary proof that the Bill thus re-introduced was identical with the Bill pending in either House at the termination of the previous Session, and upon further proof that

Facilities for
re-introduc-
ing railway
bills.

¹ Commons' Paper, 458 (1868).

² Commons' Committee on the Re-introduction of Railway Bills, 1845; evidence of the Earl of Shaftesbury and Lord Redesdale, p. 7.

³ A Bill was at first recommended in order to prevent the proceedings on Railway Bills from being discon-

tinued by a prorogation. The same result, however, was secured by the concurrence of both Houses in resolutions to the like effect. All private Bills are now usually suspended if Parliament, as in 1880, is dissolved in the middle of a Session.

the subscription contract was still binding and that the deposit was made as required by the Standing Orders, the time for the meeting of the Committee was expedited; and upon their report that the Bill was "in every respect the same as such former Bill at its last stage" in the preceding Session, such Bill might, if it were a Commons' Bill, at once be ordered to be ingrossed.

In addition to the deposit required by Parliament, projectors were at this time required to furnish proof of their good faith and resources by producing a subscription contract representing a large proportion of the estimated capital, and signed by persons who bound themselves and their representatives to subscribe for such sums as were placed opposite their names. The uselessness of subscription contracts as securities soon began to be recognized. Lord Shaftesbury, who in 1845 filled the important office of Chairman of Committees in the House of Lords, described these contracts as "perfectly useless," often binding, as they did, for millions of money, parties, their heirs, executors and administrators, as to whose means Parliament would not have the time to enquire if they had the whole year at their disposal. He mentioned a Bill which passed through the Commons and came into the House of Lords for "forming a canal across Devonshire to unite the two channels. It was the end of the Session, and there was an incomplete subscription contract. I said, 'This Bill cannot go on.' A certain person said, 'I can set that all right.' He obtained subscriptions to the amount of 200,000*l.* in the course of a few days. I found that he had got his footmen and his chimney-sweeps to sign a contract to this amount."¹ The House of Commons did something to correct this practice by directing that the powers obtained by a railway company should not take effect till a certain portion of the subscription was paid up. But the abuse was still flagrant, and was so

Subscription
contracts.

¹ Commons' Committee on Railway Bills, 1845; evidence of Lord Shaftesbury, p. 13.

reported by Committee after Committee until subscription contracts were abolished in the year 1859.¹

State control
of railways.

Provision was made by clauses in each of the early Railway Acts for such general control and supervision as were reserved by the State. These clauses were made compulsory upon promoters, as similar clauses in various classes of Bills still are, by the Standing Orders of Parliament. It soon became necessary to regulate by public legislation the enormous powers which Parliament was confiding to railway companies. This legislation was frequently preceded by enquiry. A whole library, and not a small one, might be filled with volumes of debates in both Houses upon points of railway controversy, some now spent, others still rife; with blue books containing reports from countless Committees and Commissions, and evidence taken before them; with Parliamentary returns, and Departmental enquiries; with statutes which embody the decisions of Parliament; and judicial decisions given and text books written to interpret these statutes or apply them in disputed cases. Only a brief reference to some of the most important general statutes can be given here.

Carriers Act,
1830.

It is curious to find, so lately as 1830, protection given by the Legislature to "mail contractors, stage-coach proprietors, and common carriers for hire,"² without any mention of railways. Railway companies came under the general definition of carriers,³ and were so entitled to the benefit of the

¹ The Standing Orders were amended in this sense at the close of 1858, and took effect in the following Session.

² The Carriers Act (1 Will. IV. c. 68), which recites, "the frequent practice of bankers and others of sending by the public mails, stage coaches, waggons, vans, and other public conveyances by land for hire, parcels and packages containing money, bills, notes, jewellery, and other articles of great value in small com-

pass."

³ That is, if they voluntarily undertook to act as carriers. As already appears, they were at first only expected to provide a road and rails for ordinary traders. The Railways Clauses Act, 1845, s. 86, authorized them "to use and employ locomotive engines or other moving power, and carriages and waggons to be drawn or propelled thereby, and to carry and convey upon the

statute, which made them not liable for the loss of goods above a certain value unless this value was declared and an increased rate paid for carriage. In the Highway Act of 1835,¹ railway companies were required to maintain gates at level crossings over highways. Railway companies were also chiefly responsible for the "great mischiefs" which in 1838 had "arisen by the outrageous and unlawful behaviour of labourers and others employed on railroads, canals, and other public works." By reason of such behaviour "the appointment of special constables is often necessary for keeping the peace and for the protection of the inhabitants and security of the property in the neighbourhood of such public works, whereby great expenses have been cast upon the public rates of counties and other districts."² Even the "navvy" is now better behaved. Rural parishes, however, then complained with reason that their peace was disturbed and property threatened by levies of well-paid workmen who at times were beyond all restraint. Parliament, therefore, charged the company carrying on works with the cost of all special constables appointed owing to the "behaviour, or reasonable apprehension of the behaviour," of the workpeople.

The first public Act which applied solely to railways was one of 1838, "to provide for the conveyance of the mails by railways, at a reasonable charge."³ This Act was based upon recommendations by a Committee of the House of Commons, and made the carriage of Post Office mails compulsory by all existing and future railway companies, at a reasonable remuneration, to be settled by agreement or by

railway all such passengers and goods as shall be offered to them for that purpose, and to make such reasonable charges in respect thereof as they may from time to time determine upon, not exceeding the tolls by the special Act authorized to be taken by them." But this section is permissive merely; and railway

companies are not as such bound to be carriers (*Johnson v. Midland Rail. Co.*, 4 Ex. 367).

¹ 5 & 6 Will. IV. c. 50 (amended by 2 & 3 Vict. c. 45; 5 & 6 Vict. c. 55, s. 9; 8 Vict. c. 20, s. 47). And see 26 & 27 Vict. c. 92, s. 7.

² Preamble to 1 & 2 Vict. c. 80.

³ 1 & 2 Vict. c. 98.

Level crossings.

Constables at public works.

Carriage of mails by railway.

arbitration. One suggestion of the Committee, not adopted by Parliament, was that the Post Office should have power to run its own engines on railways, with trains conveying mails and passengers, on paying the companies for services rendered and accommodation given. Meanwhile the theory that railways were common tracks upon which any traders might run their engines and carriages had been wholly demolished, and all the provisions for this traffic in special Railway Acts were found to be illusory, because railway companies had not been required to give to such trains access to stations and watering-places; because the statutory tolls on independent traffic were fixed so high that no carriers except the railway companies themselves could work at a profit; lastly, for a reason before noticed, and quite sufficient in itself, because all traffic must be under one control, and a mixture of traders' trains with companies' trains was impracticable.

Railways as
common
thorough-
fares.

Committee on
railway
system, 1840.

Alarmed, not for the first time, at the growth of powers which were of its own creation, the House of Commons, in 1840, appointed another Committee, with a view to some legislation in restraint of special Acts.¹ This Committee recognized the growing tendency towards monopoly of transit, but were of opinion "that however improvidently Parliament may, in the first instance, have granted to the railway companies such extensive powers, it is now advisable to interfere with them as little as possible," limiting interference to "a plan which may ensure the effectual administration of the laws by which each railway company is incorporated." In effect, the policy suggested was one of let-alone, subject only to a general supervision by the Board of Trade, whose duty it would be to see that railway companies complied with their special Acts, observe in what manner they "continued to

¹ Among the members of this Committee were Sir Robert Peel, Lord Stanley, Sir James Graham, Mr. Poulett Thompson, and Mr. Shaw Lefevre.

execute the important trusts committed to them," and suggest additional restraining measures, "if hereafter these should be deemed requisite."

In this sense, accordingly, Parliament legislated.¹ It made no attempt to regulate the monopoly of railways, relying, as the Committee had suggested, on "the good feelings and continued exertions of railway companies and their directors to meet the wants and remedy the complaints of the public" upon this point. Public safety was the main motive alleged for the statutes of 1840-2, which required that no railway should be opened for passenger traffic until after inspection by the Board of Trade, and also required that returns should be made to the Board as to traffic, tolls and rates, and all cases of accident. Existing bye-laws affecting persons not servants of a company were to be submitted to the Board; no new bye-laws were to be valid until sanctioned by the Board. As guardians of public interests, the Board were authorized to certify any infraction of the law by railway companies to the law officers of the Crown, who were thereupon to take the requisite legal proceedings. Railway companies were also called upon to convey troops at reduced rates.

Railways
Regulation
Acts, 1840-2.

Inspection of
railways be-
fore opening.

Returns.

Bye-laws.

Board of
Trade,
guardians of
public.

These were the main provisions of general importance, but two changes of some interest were made affecting the special Acts hitherto passed. Railway companies had been bound, under their special Acts, to make, at the expense of owners or occupiers of lands adjoining the railway, openings for the purpose of connecting it with any branch constructed upon such lands. In the event of disagreement as to the proper places for making a junction, two justices were to decide. For this tribunal, hardly a competent one for adjudicating upon technical questions of this nature, the Board of Trade was substituted, acting of course through the experts it employs as inspectors. Again, various special Acts relating

Junctions
with private
lines.

¹ 3 & 4 Vict. c. 97; amended by 5 & 6 Vict. c. 55 and 34 & 35 Vict. c. 78, s. 17.

Weight of
carriages or
waggons.

to railways limited the weight of a carriage or waggon, including its load, to four tons. Later experience showed that in many cases it was "more conducive to safety to use a heavier description of carriage or waggon." Every such limitation contained in special Acts was therefore repealed.¹

Mr. Glad-
stone's Com-
mittee, 1844.

The year 1844 produced an inquiry of great importance, leading to legislation which was meant to have a permanent influence upon railways in the public interest. On the 5th of February Mr. Gladstone, then President of the Board of Trade, moved the appointment of a Select Committee to consider whether any and what new provisions ought to be introduced into such Railway Bills as might come before the House during that or future Sessions, for the advantage of the public and the improvement of the railway system.² With a view to obtain a control over railway companies through their special Acts, the Committee in their first report recommended, and the House resolved, that a clause should be inserted in all Railway Bills passing through Parliament, making the railway authorized by the Act subject to any special general legislation which might be subsequently passed relating to railways. A clause to the same effect is still inserted in every railway Bill.³

New railways
subjected to
future general
legislation.

¹ Railway Regulation Act, 1842, long known as Lord Seymour's Act (5 & 6 Vict. c. 55, s. 16). The increased weight of engines has been already mentioned (p. 65, n.). On the first introduction of passenger railways, speeds of about twelve miles per hour only were anticipated. The rails then employed weighed only 35 lbs. per yard. As soon as speeds of twenty and twenty-four miles per hour were attempted, it was found necessary to have rails of 50 lbs. per yard. Up to 1846 the rails were increased in weight progressively to 65, 75 and 85 lbs. per yard.

² Among the members of the Committee were the Chairman (Mr. Glad-

stone), Mr. Labouchere, Lord Seymour, Mr. Wilson Patten, Viscount Sandon, Mr. Gisborne, Lord Granville Somerset, Mr. Cardwell, and five railway directors, including the chairman of the Great Western Railway, Mr. Russell. On this ground the constitution of the Committee was much opposed, but no change was made in it.

³ This common clause, first introduced into railway Acts in 1845, is now (1885) as follows:—"Nothing in this Act contained shall exempt the company or the railway from the provisions of any general Act relating to railways, or the better and more impartial audit of the accounts of railway com-

In their second report, the Committee recommended changes, already noticed, in the constitution of Committees on Railway Bills. Heretofore, they pointed out, it had not been usual to examine closely the bearing of such Bills on public interests. To ensure that public interests should not hereafter escape notice, the Board of Trade might prepare reports of all Railway Bills for the information of Committees. All Bills for competing lines might be referred to the same Committee, which should take into account the relative advantages to the public promised by new schemes, or afforded by existing companies with whose railways they would compete. A third report, made after taking evidence for three months,¹ entered fully into the whole subject of railway legislation. As a proof that Parliament did not intend to confer any monopoly on railways, the Committee of 1840 had pointed to the provisions enabling persons to run engines and carriages on the tracks. But the Committee of 1844 appeared to be of opinion that, within certain limits, a company, to which Parliament had conceded privileges, should be protected from competition.² One passage to this

Examination
of railway
bills.

Competitive
schemes.

panies, now in force or which may hereafter pass during this or any future Session of Parliament, or from any future revision or alteration, under the authority of Parliament, of the maximum rates of fares and charges, or of the rates for small parcels, authorized to be taken by the company." See S. O. 132 (Lords), 169 (Commons).

¹ Twenty-seven witnesses were examined; one of these, Mr. Laing, then engaged at the Board of Trade, was under examination for seven days. He explained and defended the proposal, afterwards assented to by the railway companies and adopted by Parliament, that at the end of twenty-one years from January 1, 1845, the Government should have

the option of buying any given line at twenty-five years' purchase of the annual divisible profits calculated upon the average of the three last preceding years.

² So, when the Committee was appointed, Sir Robert Peel contended, in the House of Commons, that a material distinction was to be drawn between new companies approaching Parliament for the first time, and companies which, relying on the faith of Parliament, had invested their capital in the construction of railways. "Parliament, it was true, might repent of the indiscretion and levity with which it had granted those powers . . . but he would advise Parliament to be very cautious how it interfered with the

effect from their report has been already cited.¹ In another, the Committee said:—"The willingness of promoters to expend capital in making a new railway is not to be at once taken as a sufficient ground for granting the necessary powers; there is no public advantage in the construction of a work which cannot afford remuneration. There can be no security for the working of a railway except its yielding a profit." On the other hand, powers so granted by Parliament might be "used as efficient instruments of extortion against existing companies, to whom might be offered the alternative of losing their traffic or of buying off opposition."

This guarded language, upholding railway companies, under limitations, against future competition, may have been used in order to reconcile the companies to the proposed revision of rates, and purchase of new lines by the State. The Committee's recommendations on these heads were embodied in a statute of the same Session.² For a time, this legislation was strongly opposed by the railway companies, who believed that, although revision and purchase were only to affect future railways, an attempt would soon be made to extend the same conditions to existing railways. In the end all opposition was withdrawn. Railway directors were probably astute enough to see that these parts of the Bill would prove a dead letter. The Bill therefore passed its third reading, and was carried through the House of Lords without further objection. It gave the Treasury power, twenty-one years after the authorization of any future railway, if the dividends had for the three preceding years averaged ten per cent. upon the subscribed capital, to fix a lower scale of tolls, fares and charges. This revision in the public interest was to be accompanied with a guarantee by the State to maintain the annual dividends at ten per cent.; and no further revi-

Mr. Gladstone's Act of 1844.

Revision of rates after 21 years.

State guarantee of ten per cent.

profits or management of companies which had been called into existence by the authority, and had invested their money on the faith, of Parliament." Commons' Debates, Feb. 5,

1844; 72 Hansard, p. 250.

¹ *Ante*, p. 87, n.

² 7 & 8 Vict. c. 85. It received the Royal Assent, August 9, 1844.

sion could then be made until the expiration of another term of twenty-one years.

A still more ambitious, as well as impracticable provision, gave to the Treasury, at the expiration of twenty-one years, whatever might be the divisible profits upon a new railway, an option to buy it, "in the name and on behalf of her Majesty," upon paying twenty-five years' purchase, estimated on an average of profits during the three preceding years. If these profits were less than ten per cent., and the company thought the terms of purchase inadequate, they might require an arbitration, in which the prospects of the railway would be considered. Many other safeguards were introduced at the instance of the companies. No option of purchase was to be exercised while any revised scale of rates had effect. Existing railways were expressly excluded from both options. But this was not enough. New branches or extensions, less than five miles long, made by an existing railway company, were also exempted; and, except with the consent of the proprietors, no branch or extension could be bought without including the whole system in the purchase.

Lastly, there was a recital¹ "that the policy of revision or purchase should in no manner be prejudiced" by this Act, but "should remain for the future consideration of the legislature, upon grounds of general and national policy." Before, then, notice of revision or purchase could be given to any company, it was enacted that Parliament should expressly authorize the guarantee of dividend or the payment of purchase-money. No doubt it was expected by the shrewd representatives of the railway companies that little harm was done by a statute which merely embodied general intentions, and that Parliament would shrink in cold blood from the necessity of giving actual guarantees or finding large sums of money for purchases more or less speculative. When the period for exercising these options arrived in 1865, ten per cent. dividends were rare enough, and railway companies

Option of
purchase by
State.

Guarantees to
be given, and
money pro-
vided, before
exercise of
options.

¹ To sect. 4 of Act.

Contingency
of ten per
cent. divi-
dends.

were again about to suffer great adversity. Had they even continued to prosper, they might have prevented the contingency on which the options depended, for the Act provided no effectual audit of their accounts, and their dividends might easily have been made subject to deductions which would have kept revision at bay and probably purchase.

Third class
passengers.

While the Act of 1844 completely failed in its two main objects, it was successful in obtaining for third class passengers the great boon of cheaper fares and greater facilities in travelling. Railway managers had not yet discovered that third class traffic was their main stay.¹ On the contrary they treated it as a hindrance to the development of revenue, discouraged it by wretched accommodation with long delays, and arranged their train service with a view to force passengers to change at one point or other of their journey from a cheap to a more expensive class of carriage.² This was especially the case when a long line of communication was broken up into several links, each in the hands of independent companies, subject to no control, and able to adjust their trains at their discretion.³

¹ I believe that few railway managers have made this discovery even now, because they allege that the result of carrying third class passengers by nearly every train has been a large decrease in the proportion of first and second class passengers, without any large increase in travelling for long distances, although for short distances the passenger traffic has increased through the facilities now offered.

² In 1844, third class passengers were conveyed in carriages exposed to the weather. A third class passenger from London to Liverpool was forced to spend two days on the journey. Even a second class passenger had to stop at Birmingham for the night unless he travelled thence to Liverpool by the first class. Third class passengers were nine

hours and a half on the journey between London and Bristol. Mr. Laing, in his report as Secretary to the Railway Department of the Board of Trade, stated that, in 1844, third class passengers could "seldom avail themselves of the facilities of railway travelling for long distances," and that, through the want of these facilities, the proportion of second and third class to first class passengers was, upon the London and Birmingham Railway, as 63 to 37; upon the Grand Junction line (between Liverpool and Birmingham), as 46 to 54.

³ In the report just cited, Mr. Laing mentions the following example:—"The London and Birmingham Railway Company runs seven mixed trains, or trains with second class carriages, each way

The Act declared, and not too soon, that it was “expedient to secure to the poorer class of travellers the means of travelling by railway at moderate fares, and in carriages in which they may be protected from the weather.” One third class train at least was to be run on each week day from one end to the other of each trunk, branch or junction line, starting at an hour to be approved by the Board of Trade, stopping at each station, and travelling at an average speed of not less than twelve miles an hour, including stoppages; with carriages enclosed and provided with seats, and fares not exceeding a penny per mile. The Act of 1844 was, in fact, the poor traveller’s charter. He was allowed half a hundred-weight of luggage without charge. His children under three years of age must be carried free; between three and twelve years, they were to pay half fares. If passenger trains were run on Sundays, parliamentary trains must be run also on those days. Not only were new companies subjected to these conditions; they were imposed on every existing company which came to Parliament for an Act to extend or amend its powers. In other words, the statute was soon made of universal application. In return, railway companies were exempted from passenger duty upon their receipts from these penny a mile fares.¹ Further facilities for the conveyance of mails and of troops or police were given by the Act. Railway companies were also bound to allow electric telegraph wires to

Parliamentary trains.

Mails, troops and police.
Electric telegraphs.

daily; but the Grand Junction Company only runs two mixed trains, of which one leaves Birmingham at 6 a.m., and another leaves Liverpool at 4.45 p.m., being respectively too late and too early to form links in the through communication by day between London and Liverpool.” Taking the total number of passengers upon these lines in 1842, it appeared “that at least 75,000 persons annually who would wish to travel by second or third class carriages are compelled, by the ar-

rangements of the Grand Junction Company, to travel by first class.”

¹ When railway companies found it to be their interest to carry third class passengers at rates not exceeding a penny per mile, by quick trains on through routes, without stopping at intermediate stations, they lost the benefit of this exemption, as they did not come within the precise terms of the Act. It was a hard case, met, in part, by 46 & 47 Vict. c. 34 (Cheap Trains Act, 1883).

be laid down by the side of their lines for the service of her Majesty; and if wires were laid by the railway company or by other persons, they were to be open for the service of the public at reasonable charges for their use.

These were the principal provisions in an Act which, though it did not transfer English railways to the State (happily, perhaps; for the State might have found them a hard bargain) conferred great and enduring benefits on poor travellers, at a time when they were neglected as a source of revenue, and were hardly better treated, or more rapidly conveyed, than the cattle which were consigned by train to farmstead or market.

Increased
length of
local Acts.

Another recommendation made by the Committee of 1844 had an important bearing upon Private Bill Legislation. Year by year, as defects came to light, or new wants developed, the provisions in special Acts became more complicated and numerous, when any company was incorporated for the purposes of a new undertaking and the construction of works. In 1801, the Wandsworth and Croydon Railway Act contained ninety-five clauses; in 1844, the Lancaster and Carlisle Railway Act contained 381 clauses. By far the greater number of these clauses were common to all railways, and many of them to all new undertakings. Yet they were repeated mechanically in almost every local Act, along with the general conditions which Parliament imposed upon promoters. The statute book, in consequence, gradually became more and more unwieldy, until at length five bulky volumes could hardly contain the local Acts passed in a single Session, while the general legislation of the year went easily into one volume.¹ To stop this growing evil, the Committee of 1844 endorsed a suggestion, long before made by persons interested in Private Bill Legislation, that much expense might be saved, and brevity as well as precision and uniformity secured, if all common and indispensable clauses were classified in general Acts, which

¹ See the Public General and Local Statutes for 1840-4.

could then be incorporated into each special Act by a few lines of reference.¹

In 1845, Parliament adopted this suggestion, and passed three general statutes upon a plan already familiar in the legislation upon inclosures. The first statute contained 164 clauses "usually inserted in Acts with respect to the constitution of companies incorporated for carrying on undertakings of a public nature."² These clauses regulated the raising of capital, the rights of shareholders, the powers and duties of directors, the declaration and payment of dividends, the keeping and auditing of accounts, and the general management of the company's affairs so far as concerns its proprietors and its creditors. The second Act, of 150 clauses,³ provided for the taking of land by companies, whether compulsorily or by agreement, the payment of compensation, the security of title to property taken, and the sale of superfluous land not required for the purposes of the undertaking. This statute applied to all companies incorporated with powers to acquire land. The third Act, of 160 clauses, applied specially to railways,⁴ and regulated their construction, the temporary use of lands during construction, the taking of additional lands for stations, the crossing of roads, the building of bridges, screens for roads, accommodation works for landowners, and the working of minerals under a railway.

Consolidation
Acts, 1845.

Companies
Clauses Act.

Lands
Clauses Act.

Railways
Clauses Act.

A modern Railway Bill now contains by reference in a single clause parts or the whole of these three statutes, with the Acts amending or extending them; and a measure which would otherwise consist of five or six hundred clauses rarely exceeds fifty. Since 1845 this work of consolidation has been extended to provisions affecting gas and water works,

Modern
railway bills.

Later Con-
solidation
Acts.

¹ See *post*, chapter on Consolidation Acts.

² The Companies Clauses Consolidation Act, 1845 (8 Vict. c. 16). See also Companies Clauses Acts, 1863 and 1869.

³ Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18). See also Acts of 1860 and 1869.

⁴ Railways Clauses Consolidation Act, 1845 (8 Vict. c. 20). See also Railways Clauses Act, 1863.

harbours and docks, markets and fairs, cemeteries, telegraphs, police, and various municipal regulations.¹ In this way, not only has the expense of printing Bills and Acts been reduced, but the work of Private Bill Committees has been lightened, and legislation has been made more concise, certain and uniform. At the same time the consolidated provisions in all these statutes are not made rigid and inflexible. They may be varied in the special Act if sufficient cause be shown by promoters, and are usually incorporated so as to form part of the special Act, "except where expressly varied" by such Act.

Apprehended
monopoly by
railways.

The year 1846 was fruitful in inquiry. Both Houses appointed Committees to consider the growing powers of railway companies, and the monopoly of transit which these bodies were gradually setting up in all parts of the kingdom aroused serious apprehensions in Parliament. The turnpike roads, made at so great an expenditure, after absorbing so much time and care in legislation, no longer yielded the tolls necessary for their maintenance. From the same causes, canals, in many cases, were losing the margin of revenue which afforded a profit.² In 1845 began a long series of Acts, annexing canals to railways,³ or bringing them under the control of railway companies, which then, by adjusting

¹ *Post*, c. on Consolidation Acts.

² Not many years before, some canals had returned large profits. In 1836, an original share in the Loughborough Canal, which cost 143*l.*, was worth 1,250*l.*, and yielded a dividend of 90*l.* or 100*l.* a year; the fourth part of a Trent and Mersey Canal share, or 50*l.* of the company's stock, was worth 600*l.*

³ It is fair to remember that the promoters of railways were forced to buy many canals to get rid of a parliamentary opposition which might otherwise have proved fatal. The purchase of the Stratford-on-Avon

Canal by the Oxford, Worcester, and Wolverhampton Railway Company is one of several like instances. The same company (now Great Western), as the price of obtaining their line, in 1845, were obliged to guarantee to the Severn Navigation Commissioners a sum of 14,000*l.* a year, this being the estimated amount of tolls on the security of which the commissioners had borrowed money, and their apprehension being that a competing railway would divert traffic, and reduce their revenue. This liability is still binding on the Great Western Railway Company.

rates or blocking transit, secured a monopoly for heavy merchandize, as well as for light goods and passengers. In 1846, so numerous were the Bills of this nature promoted by railway companies, that a Committee of the House of Commons was appointed specially to consider the policy of sanctioning them. The general conclusion come to was, that it would not be politic altogether to prohibit the amalgamation of railways with canals. The Committee suggested, however, that "a most searching inquiry" should be made into the merits of each case, and these amalgamations should only be allowed when it was clearly proved that they could be effected without prejudice to public interests. Among other safeguards recommended were a low scale of tolls and charges, and strict precautions for maintaining the canals in efficient repair and ensuring a proper supply of water.

Commons' Committee on railway and canal amalgamation, 1846.

Committees on Private Bills in 1846 appear to have been either uninfluenced by these warnings or satisfied with the case made out by promoters, for in that Session alone special Acts were passed which transferred 774 miles of canal from independent bodies to railway companies. Under the stress of railway competition, indeed, canal proprietors had often little option between ruin or surrender. This unequal rivalry could have but one end. Some canals became derelict.¹ Nearly one-half were bought up by railway companies and made subsidiary to their main undertakings.² By leaps and bounds, railways absorbed the through traffic between producing and consuming districts; they even superseded the ordinary roads for much purely local traffic. In short, they became, and, with rare exceptions, still remain, the sole practicable means of land transport for passengers and goods for

Result of legislation in 1846.

¹ The Commons' Committee on Canals, 1883, give (p. 228) a list showing 250 miles of canals and navigations abandoned or converted into railways.

² Ib. 214. According to a Board of Trade return, 1,436 miles of canals and navigations in the United Kingdom were owned or controlled by railways up to the end of 1882, out of a total mileage of 3,029.

long distances;¹ monopolies, tempered as a whole by the control of Parliament, and tempered also in part by two important limitations—competition among themselves, and competition between ports and places accessible from coast or river.²

Steamboat
powers of
railway com-
panies.

By obtaining from Parliament the grant of powers to own and run steamboats, the leading railway companies were able to compete with British shipowners even at sea. These powers, first given in 1848,³ were afterwards extended, though with much hesitation, by Parliamentary Committees, on the plea that they were to be used by railway companies virtually for steam ferry purposes, for bridging gaps in a continuous line of communication. From Holyhead to Dublin, for example, the transit might "be fairly considered as a portion of the railway enterprise;" the London and North Western Company naturally wished to ensure certain and speedy conveyance for its traffic by land and sea between London and Dublin; and the line to Holyhead would never have been constructed but for this object.⁴ When, however, other railway companies were authorized to run steamboats to Rotterdam, Antwerp, Flushing, Ostend, Channel Islands, Havre, St. Malo, and many other French ports, we must clearly go beyond these limited reasons for the grant of such wide powers.

The steam
ferry theory.

¹ The project for a ship canal between Manchester and Liverpool, with a capital of seven millions, was rejected in 1883, and again in 1884, but is now (1885) once more revived. Since the introduction of railways there has been no attempt to compete with them on any considerable scale, and the result of this energetic adventure will therefore be watched with peculiar interest. An Act of the same character, passed in 1884 (47 & 48 Vict. c. 161), authorizes improvements in the navigation of the Lower Ouse, between the Humber and Goole, which will enable sea-going vessels of large tonnage to reach that port, a step towards a

ship canal from the east coast to manufacturing towns in the West Riding. In 1827-8 a ship canal was projected from Portsmouth to London.

² The Joint Committee of 1872 on Railway Amalgamation stated that sea competition then affected the rates for goods at three-fifths of all the railway stations in the United Kingdom (Report, p. 19).

³ To Manchester, Sheffield and Lincolnshire Railway Company by Humber Ferries Improvement Act, for improving the steam communication across the Humber, from New Holland to Hull.

⁴ Report of Board of Trade and Railway Commissioners, 1847-8.

Parliament had, in fact, come to the conclusion that, though these powers must be carefully watched, and public interests safeguarded in the case of all proposals by railway companies to run and own steamboats,¹ the qualified monopoly thus granted was, on the whole, justified by corresponding advantages to the public; that railway companies should, in fact, be allowed to carry by sea as well as by land if the latter business were expedient for the development of their traffic.² How far this theory was carried is shown by an Act of 1864 which authorized the Manchester, Sheffield and Lincolnshire Railway Company to run steamboats and other vessels to the following ports:—Rotterdam, Antwerp, Hamburg, Flushing, Lubeck, Stockholm, Copenhagen, Revel, Cronstadt, St. Petersburg and Königsberg. Witnesses examined at this period might well be puzzled to answer the question “What is a ferry?” consistently with the ferry theory as a reason for this legislation. And it was equally hard to answer the argument that, if one railway company were authorized to run steamboats to Revel, Copenhagen and Cronstadt, there was no reason in principle why another railway company should not be allowed to carry goods from its termini in its own steamers to New York, Calcutta and Melbourne.³

Lord Stanley's Committee, 1864.

By the gradual extension of their powers to run steamers⁴

¹ See Commons' Standing Orders of 1885, Nos. 156, 162; and Railways Clauses Act, 1863, ss. 30, 35. By Acts of 1868 and 1871, railway companies booking through by rail and sea are allowed the same limitation of liability as shipowners in respect of sea risks. (31 & 32 Vict. c. 119, s. 14; 34 & 35 Vict. c. 78, s. 12.) In return for this privilege, railway companies are required to charge the same fares for passengers who use their steam vessels only as for passengers who travel both by their steam vessels and railway. (31 & 32

Vict. c. 119, s. 16.)

² Report of Commons' Committee, 1864, of which Lord Stanley was chairman. The Committee add that the same arguments apply to the ownership by railway companies of docks, piers, harbours and ferries. But the House of Commons declined to adopt a proposal by the Committee to modify the Standing Orders in this sense.

³ Clifford on Steamboat Powers of Railway Companies, 1865, pp. 52, 53.

⁴ In recent instances these powers have been granted without any limi-

Railway competition as check to railway monopoly.

General powers of leasing and selling railways.

Board of Trade (Railway Department).

the monopoly of railway companies, as the shipowners contended, was materially enlarged, and private competition by sea made more difficult; while the railway companies maintained that they only acquired the means of accommodating traffic efficiently. The other expected check to monopoly, competition among the railways themselves, seemed to be threatened by bills for amalgamations, leases or other arrangements under which certain companies began to swallow up their neighbours, with ever-growing appetites for more. It was found in 1845 that clauses had been negligently sanctioned in various private Acts of that Session giving to railway companies general powers of granting or accepting leases or sales of their own or other lines; and a public Act was hastily passed¹ making void these general powers, and requiring in all future cases the authority of a distinct statutory provision specifying by name the railway to be leased or transferred and the company making and accepting such lease or transfer. The Commons' Committee of 1846 urged that no general powers of this nature should be allowed in any future Railway Bill; and that in all cases of railway amalgamation the rates and tolls of the amalgamated companies should be subjected to revision.

Much benefit had been hoped on this and other points from the guidance of the Railway Department of the Board of Trade. Mr. Gladstone's Committee in 1844 made a complaint, already mentioned, that hitherto Committees had not examined Private Bills systematically with reference to public interests, and suggested that reports should be made by the Board of Trade for the information of Committees on all Railway Bills, especially when they contained provisions novel

tation of time. In 1884, however, upon an opposition by steamboat owners, a Committee in the Commons limited to fourteen years a renewal of the steamboat powers of the London and North Western Railway Company, on the ground that such

powers required revision from time to time in the public interest. (L. & N. W. Ry. Act, 1884, s. 75.)

¹ Railway Leasing Act (8 & 9 Vict. c. 96). See also Railways Clauses Act, 1845, ss. 87, 92, 93; and Railways Clauses Act, 1863, ss. 22—29.

in principle, or involving considerations of public policy, such as amalgamations and agreements between separate companies.¹ Up to this time Bills embodying railway amalgamations had usually been unopposed; and in conformity with the usual practice, unless they were opposed by individual petitioners, they received little attention and were regarded as only affecting the private interests of the amalgamating companies. The Board of Trade urged, with reason, that such extensive transfers, not only of property, but of powers and privileges conferred by Parliament, should no longer be treated as mere matters of course, but as raising important questions of public policy.² It is clear that, in sanctioning the early Railway Acts without safeguards in the public interests, Parliament acted under a misapprehension. The theory that railways would be used by the engines and carriages of private traders, upon payment of certain tolls, explains the fact that railway companies, like the trustees of turnpike roads, were authorized to lease their tolls. When it became clear that a common user of railways was impracticable, and that companies must possess complete control over their lines, it followed that they would thereby acquire a complete monopoly of the means of communication; and it followed also, that upon Parliament devolved a corresponding obligation "to secure the public as far as possible from any abuse which might arise under this irresponsible authority."³

Early railways, working of, imperfectly understood.

Lease of railway tolls.

¹ Fifth Report of Railway Committee, 1844. The Leeds and Selby Railway, after its transfer to the York and North Midland Company, had become useless to the public. Several similar cases are mentioned by the Committee, who add:—"These important questions of principle have been treated slightly and superficially; the demands of companies have not been, and scarcely could have been scrutinized unless there were opposing parties in the field; and there have been many

such demands, not resisted by any particular interests, which, nevertheless, it would have been important to sift and investigate in the interests of the public."

² Railway Department of Board of Trade, Report on Proposed Railway Amalgamations, May, 1845.

³ Report of Commons' Committee of 1839, of which Sir Robert Peel was chairman. The Committee of 1840 report to the like effect:—"At the time when Parliament first sanctioned any extensive lines of commu-

Proposed
amalgama-
tions in 1845.

Independent
links in rail-
way commu-
nication.

Traffic im-
peded by
conflicting
railway
interests.

It was in this spirit, and fortified by high authority, that the Railway Department of the Board of Trade approached the consideration of the numerous amalgamation schemes of 1845. Their report contained an able and impartial statement of reasons for and against amalgamation. A railway company, they thought, might have a direct pecuniary interest in the sale of its line to a powerful neighbour, with a view to its being wholly or partially shut up; and all hope of effective competition between railways must be abandoned if companies were allowed unlimited powers to form "permanent and indissoluble combinations against the public the very moment they discover that monopoly may be more profitable than competition." On the other hand it was undeniable that the public as well as the companies might often derive benefit from amalgamation. There were then many small independent links in what should have been continuous lines of communication, and worked under one management.¹ Serious hindrances often arose in the working of through traffic from the conflict of interests, and the want of any supreme control. The inconveniences and delays to passengers in the journey from London to Liverpool, were repeated on almost every through route in the kingdom. Even when companies owning the various links along these routes were in friendly relations, the want of a united interest and uniform management was conspicuous. It happened too often that hostile interests arose, and then the public, who had no redress, were the chief, though not the only sufferers.² Another,

nication, the subject was imperfectly understood; powers were consequently conceded to these companies which counteracted and rendered of no avail the evident purposes of the Legislature."

¹ Between London and Liverpool the line belonged to three companies. Three separate systems also intervened between Bristol and Leeds.

² In Mr. Laing's Report of 1844, some instances are given of disputes between companies: "For two years the public have been deprived of cheap access to the London Bridge terminus, and of the benefit of low fares on the Croydon Railway, owing to a dispute between the Croydon and Greenwich companies as to the amount of toll to be

though a minor reason, in favour of amalgamation was the economy arising from consolidated staffs and management. A strong case was thus presented for amalgamation under proper conditions. The Board of Trade, however, recommended a postponement of all Bills proposing arrangements of this nature, until "further experience had been gained of the true interests and relations of the companies and the public, and of the efficacy of any legislation against undue monopolies."

Report
against amal-
gamation.

Among the pending schemes in 1845, the chief was one for an amalgamation of three companies now forming part of the London and North-Western system, and then having a common terminus at Liverpool—the Grand Junction, Liverpool and Manchester, and North Union. For the first time in the history of these absorptions a strong local opposition was threatened, and memorials against this project reached the Board of Trade from local bodies and traders at Manchester, Liverpool, Bolton, and even Belfast. It was objected that the united companies would have an obvious interest in preventing the construction of new lines to Liverpool, Birkenhead and Fleetwood, and in diverting traffic from the two last-mentioned ports. In order to meet the objection of monopoly, the Liverpool and Manchester Company offered guarantees which were then thought material, though they now only cause amusement by the contrast they suggest with the increased facilities for traffic now voluntarily afforded. The company would, they stated, bind themselves not to exceed their present charges on

Liverpool and
Manchester,
&c. Amalga-
mation Bill.

paid by the former for the use of one and three-quarter miles of the Greenwich line. The extent of inconvenience to the public may be judged of from the fact that the number of passengers using the Croydon Railway in the course of the year fell off more than 200,000, owing to the dispute and consequent increase of fares, and that the Croydon Com-

pany were actually on the point of abandoning their traffic altogether." Owing to disputes between the railway companies whose lines terminated at Preston, separate stations were erected at great expense, and passengers proceeding through were compelled to walk 200 yards, without shelter, from the carriages of one company to those of the other.

passengers, which were at the rate of a little under $2\frac{1}{2}d.$, $1\frac{1}{2}d.$ and $1d.$ per mile for first, second and third class passengers respectively; they would also run at least two third class trains a day each way, protected from the weather.¹ Increased advantages for mineral or goods traffic were not offered. The Board of Trade thought these guarantees insufficient, gave weight to the local objections already mentioned, and reported on public grounds against the amalgamation. Committees of both Houses, however, arrived at a different conclusion, and the Bill became law.

Parliament, it will be seen, had shown no little jealousy of interference in its Private Bill legislation by the new Department of the Board of Trade, and Committees disregarded their recommendations in the two most important projects of 1845.² A new experiment in the same direction was, however, tried. A Committee of the House of Lords was appointed in 1846 to consider the subject of railway legislation. The House of Commons appointed a second Committee on the same subject. Both these Committees concurred in recommending the creation of a new department, which should make preliminary investigations into all railway schemes, and be charged with a general control and supervision of railways. Accordingly, in 1846, an Act was passed³ establishing a Board of Commissioners of Railways, to whom the statutory powers of the Board of Trade were transferred.

Lords and
Commons'
Committees
on Railways,
1846.

Railway Com-
missioners.

Their duties.

As defined by the Act, the duties of this new body were to see that railway companies did not contravene the provisions of their special Acts, or of any general statutes affecting them; to report to Parliament, if so directed, upon any pending

¹ The London and North Western Railway Company now (1885) run fourteen trains daily between London and Manchester, and thirteen between Manchester and London. All are express trains, and carry third class passengers.

² In August, 1845, the Special Railway Board, constituted in 1844, was abolished, and the practice of reporting on the actual or comparative merits of railway schemes came to an end.

³ 9 & 10 Vict. c. 105.

Railway Bills, especially as to the competition they involved with existing or proposed lines, and any powers sought for acquiring other lines; and to inspect and survey any proposed railways. There were to be five Commissioners; a chairman, Salaries. with a salary of 2,000*l.*, but not disqualified from sitting in Parliament; two members, with 1,500*l.* each; and two unpaid members. It was proposed that the chairman should be a member of the Government, removable upon any change of administration; the two unpaid Commissioners were also to be members of the Government, so that the new Board might have a representative in each House.¹

Commissioners so equipped were evidently marked out for functions more important than those defined in the Act which constituted them. In 1847 a Bill was therefore introduced enlarging their powers. It made them, in effect, Railways
Bill, 1847. arbiters of all railway legislation. Promoters were not even to survey an intended line until they gave permission. When the survey was made one of their officers was to report upon the project. With them plans and sections were to be deposited; they were to examine into compliance with Standing Orders, and report to Parliament upon engineering merits, and proposed rates. Considerable authority was vested in them over existing railways. They were to report annually to Parliament upon tolls, fares and charges, and upon the regularity or irregularity of trains; they might call for returns as to traffic, and many other details of management; inspect the books and documents of railway companies; and settle disputes between companies having termini or portions of line in common. But the Bill, as might have been expected, aroused opposition from two quarters. Parliament was again jealous of this proposed interference with legislation. Railway companies disliked powers which would, they said, discourage enterprise and injure existing lines, without affording any commensurate public advantage. The measure was received

¹ 88 Hansard, p. 892.

Bill withdrawn.

with such general disfavour that it was withdrawn before the second reading.¹ A blow was thus given to the authority of the Commissioners from which they never recovered. In 1848 the new department was partially re-united to the Board of Trade; and in 1851 Parliament put an end to its existence, re-transferring its powers and duties to the Board of Trade.²

Departmental reports, their treatment by Committees.

High authority has declared that, owing to the general neglect by Committees of reports laid before them by the Railway Departments, these reports "whether good or bad in themselves, became useless, or worse than useless."³

Preliminary Inquiries Act, 1848.

This was not the only occasion on which Parliamentary Committees showed themselves averse from acting on the suggestions offered by Government Departments. In 1848 an Act was passed⁴ authorizing local and preliminary inquiries by inspectors of the Board of Trade and Admiralty in the case of certain Bills. The object was two-fold: to diminish the expense of Private Bill legislation by taking evidence in the locality in which proposed works were to be constructed; and to save the time of Committees by laying before them this evidence and the inspectors' reports upon it.

Unsatisfactory results.

Neither object was accomplished. What really happened was that opponents of Private Bills heard the promoters' case but reserved their own, and went before Committees with this material advantage; while Committees, finding incomplete materials in the statements laid before them, disregarded the reports as well as the evidence; so that the whole inquiry was gone into again *ab initio*, and the only result was a duplication of expense.⁵

¹ The Bill (Railways, No. 2) contained 111 clauses, with schedules, and may be usefully referred to as an example of the general control over railways and railway legislation which the Government then desired to centre in a Government Department (442 of 1847). No such proposal has been repeated.

² 14 & 15 Vict. c. 64. Commons' Committee on Railway and Canal Legislation, 1858, evidence of Capt. Douglas Galton, p. 17.

³ Joint Committee on Railway Companies Amalgamation, 1872; Report, p. 7.

⁴ 11 & 12 Vict. c. 129.

⁵ See *post*, Chapter on Preliminary Inquiries.

As the Act, though well meant, was an admitted failure, it was repealed in 1851.¹ Experience has shown, in this as in other instances mentioned in these pages, that Committees to whom either House refers a Bill prefer to act upon their own judgment in deciding as to its expediency,² and will not be satisfied with second-hand testimony. They treat Departmental Reports with respect; but, in their view, such reports, after all, only reflect the opinions of individual officials, sometimes preconceived, often founded upon imperfect information supplied from only one source; whereas Committees are supplied with the fullest and most trustworthy information by opponents as well as promoters, and have the best professional aid which both sides can procure in sifting and weighing the facts.

Repeal of Act.

View taken by Private Bill Committees.

In 1845, as the reports of the Board of Trade showed, much was to be said for the absorption of small railways, which could offer no sufficient plea for an independent existence, and hindered the continuous flow of traffic. Amalgamations, however, went on so rapidly as to arouse grave anxiety in Parliament. In 1846, upwards of 200 bills were promoted by railway companies for acquiring or controlling canals. Again, after the revival of speculation in 1853, amalgamations of such importance were proposed that the House of Commons appointed a Select Committee, over which Mr. Cardwell presided, to consider, among other questions, "the principles which ought to guide the House" in its legislation upon projects of this class. The Committee heard much evidence, and made five reports. On general grounds of policy, they suggested that amalgamation between railway companies should be discouraged. It was better, they thought, to have working arrangements for the regulation of traffic and division of profits. These

Mr. Cardwell's Committee, 1853.

¹ By 14 & 15 Vict. c. 49, which limited these enquiries to works affecting navigation; and see 25 & 26 Vict. c. 69. ² See *post*, p. 121.

arrangements between railway companies should, after limited periods, be subject to revision by the Board of Trade.

Proposed
union of Lon-
don and North
Western and
Midland
Railways.

In 1853 there was a Bill, which caused much alarm, for the amalgamation of the London and North Western and the Midland Railways. Mr. Cardwell's Committee reported against the scheme, on the ground that it would involve the union "under one control, of a raised capital of 60,000,000*l.*, between one-fourth and one-fifth of the railway property of the kingdom; an annual revenue exceeding 4,000,000*l.*; and an extent of railway communication of upwards of 1,200 miles, or more than one-sixth of the railways in the United Kingdom, forming, from the importance of the towns with which it is connected, a key to the principal communications of the country." The Chairman of the Great Northern Railway Company told the Committee that, if the proposed amalgamation were permitted, it would be impossible for his company to maintain its independence; and much evidence to the same effect was given by the managers of some of the other great railway companies. These witnesses agreed that lines might be amalgamated up to certain limits, with economical results in working and management; but that when the lines involved 60,000,000*l.* of capital and 1,200 miles of railway, those limits were far exceeded, and for its own convenience so vast a company must sub-divide its management.¹ The intended combination of interests, overwhelming as it then appeared, was prevented, no doubt wisely, by this inquiry. Neither the Committee nor the opposing railway managers could foresee that, within thirty years, the capital, the revenue and the mileage of each of the companies proposing this union would far exceed what these would have been in 1853, if united, and that the annual revenue of one of these companies alone would be

¹ Report of Commons' Committee of 1853 on Railway and Canal Amalgamation; Evidence of Managers of

Great Northern and Great Western Companies.

two and a-half times greater than the income which then appeared portentous if placed under one control.¹

Mr. Cardwell's Committee endeavoured to ensure greater uniformity of decision on Railway Bills by Private and Public Committees. They pointed out that, on the question of gauge, as of amalgamation, what Parliament on the one hand endeavoured to settle by means of general inquiry or legislation, Parliament also, on the other hand, at once proceeded to unsettle, in adopting the decisions of Private Bill Committees, which examined the special circumstances of each case. One remedy suggested for this inconsistency was the appointment of a General Committee, from which the Chairmen of the Committees on all Railway Bills should be selected. This suggestion was carried out in 1854, and in practice has proved of great value, by giving to the House of Commons, for permanent service in presiding over its Committees, a body of more or less trained members acquainted with the principles of private legislation affecting railways. Another suggestion made by the Committee, and also carried out in 1854, was that the Board of Trade should report upon the Railway Bills of the year in order to inform Committees whether these Bills contained any exceptional legislation.

Conflicting
decisions by
Committees.

Chairmen's
panel for
Railway Bills.

Board of
Trade Re-
ports.

The precautions thus taken, and the renewed disapproval of railway amalgamations in 1853, did not hinder Committees from passing, as before, Private Bills promoted with this object. Thus, the North Eastern Company,² which, in 1845-7, by the absorption of small lines in their district, had become owners of 274 miles of railway, acquired in 1854 the York and North Midland and other lines. They now own 1,534 miles, holding almost exclusive possession of the north eastern counties, with an authorized capital of nearly 61,500,000l.³ By amalgamations sanctioned

Progress of
railway amal-
gamation.

North
Eastern Rail-
way.

London and
North

¹ Board of Trade Returns of Railways, 1884.

² So named in 1854, having before been successively known as the York

and Newcastle, and the York, Newcastle, and Berwick.

³ Board of Trade Returns, pp. 22, 52, extending to the close of 1883.

Western
Railway.

in 1846, notwithstanding adverse reports from Lord Dalhousie's department, the London and North Western then owned 379 miles of railway. In 1859, the objections of Mr. Cardwell's Committee notwithstanding, they were permitted to acquire the three Welsh lines to Holyhead, and by a long succession of statutes their system now extends over 1,793 miles, with an authorized capital of 105,940,000*l*.¹

Great
Western
Railway.

The Great Western Company originally consisted of 118 miles. By gradual accretions, dating from 1844, their system was extended, and in 1854 they, too, succeeded in persuading a Committee to exempt them from the rule suggested in 1853, and to give them possession of the Shrewsbury and Birmingham and Shrewsbury and Chester lines. The Great Western has now expanded from 118 to 2,268 miles, the longest railway system in the United Kingdom, with an authorized capital of 75,800,000*l*., not including permissive powers unexercised, subscriptions to other undertakings, and capital raised jointly with other companies.²

Royal Com-
mission on
Railways,
1865-6.

In following the progress of railway amalgamation to its present, though not probably its final ending, two general enquiries into this subject have been passed over, but deserve prominent mention here. In 1865-6 a Royal Commission was appointed on railways. It consisted of persons of great authority³ who devoted their attention chiefly to questions of

¹ Board of Trade Returns on Railways, 1884, pp. 16, 50. The London and North Western Railway Company took this name in 1846.

² *Ib.* pp. 10, 48. The Great Western system consists of 116 railways, which were separately authorized. In 1885 its total mileage, including lines jointly owned, was 2,553. So the original Eastern Counties line, 139 miles long, now the Great Eastern, has 1,049 miles of railway, and a capital of 41,656,000*l*. The Midland, 180 miles long, when so named in 1844, has, by continual

expansion, attained a mileage of 1,381, with an authorized capital of nearly 76,549,000*l*., and its subscriptions to other companies amount to nearly 7,000,000*l*. more. In Scotland, the Caledonian and North British Companies show a similar record.

³ The Royal Commissioners were the Duke of Devonshire, the Earl of Donoughmore, Lord Stanley, Mr. Leveson Gower, Mr. Robert Lowe, Sir Rowland Hill, Mr. Roebuck, Mr. Horsfall, Mr. Dalglish, Mr. Glyn, Mr. A. S. Ayrton, Captain

rates and interchange of traffic, with a view to greater economy in working and a reduction in railway charges. All they say about amalgamation is that it should not be allowed "without affording to Parliament the opportunity it now possesses of determining the conditions under which such amalgamation should be permitted."¹ They regarded amalgamation as a question of public policy over which Parliament should not relax its control. But they were not opposed to it in principle, and were of opinion that in Ireland public benefit would result from amalgamation, and that facilities for it there should be afforded by Parliament.

From its constitution and labours the Joint Committee which in 1872 enquired into railway amalgamations was the most important Committee on Private Bill legislation since that of 1853.² They arrived at conclusions somewhat similar to those of the Royal Commission. Fusion between railway companies within certain limits they regarded as inevitable; for one reason because the companies can by mutual arrangement, without Parliamentary intervention, secure many of the results of complete fusion under statute. Nor would it be fair, in the opinion of the Committee, either to the companies or to the Private Bill Committees which have sanctioned amalgamation, "to assume that the public interest has been overlooked in the passing of such Bills. It is generally easy to show that the public will gain largely by harmonious arrangements; and considering how doubtful is the extent of

Joint Committee of 1872.

Advantages of railway fusion.

Douglas Galton, Mr. E. T. Hamilton, and Mr. J. R. McClean. They investigated the management of foreign as well as English railways, and reported in 1867 [3844]. The minutes of evidence occupy a huge volume [3844 I.]; there are also two volumes of appendices [3844 II., III.].

¹ Report of Royal Commission on Railways, p. 91.

² Six members of each House

were appointed—the Marquis of Ripon (then Lord President), the Marquis of Salisbury, the Earl of Derby, Earl Cowper, Lord Redesdale, and Lord Belper; Mr. Chichester Fortescue (President of the Board of Trade), Mr. Childers, Mr. Cross, Mr. Ward Hunt, and Mr. Dodson. Mr. Chichester Fortescue was chairman. The report and minutes of evidence occupy nearly 1,300 pages,

competition, or of the facilities it produces, the balance of advantage, to the public as well as to the shareholders, may often well be thought to be on the side of amalgamation."¹ Experience, they added, showed that amalgamations of some kind were expedient as well as inevitable; and they could make no better suggestion than that each amalgamation scheme should be "dealt with as it arises," after careful consideration by a Joint Committee specially selected, as to "its bearing on other amalgamation schemes and on the general railway system." There might be cases of "amalgamations so large as to be of doubtful policy"; and the Committee pointed out "the possible ultimate dangers of unlimited combination." On the other hand, they were of opinion that there were "still cases in the United Kingdom in which amalgamation is desirable and ought to be encouraged."²

In effect, this report justifies the decisions of Private Bill Committees upon proposals for railway amalgamation, which, as may fairly be assumed, have been approved only upon clear evidence in each case that amalgamation would be of public advantage. The history of the leading railway companies, as we have seen, is one of progressive growth in the area they cover, in capital and in influence. It seems hard at first sight to reconcile this vast expansion and apparently over-

Inquiries by
public and
by private
committees.

¹ Report, p. 27. The Committee give as "a striking illustration" of this opinion the case of the North Eastern Railway:—"That railway, or system of railways, is composed of thirty-seven lines, several of which formerly competed with each other. Before their amalgamation they had, generally speaking, high rates and fares and low dividends. The system is now the most complete monopoly in the United Kingdom. From the Tyne to the Humber, with one local exception, it has the country to itself, and it has the lowest fares and the highest dividends of any English railway. It

has had little or no litigation with any other companies. While complaints have been heard from Lancashire and Yorkshire, where there are so-called competing lines, no witness has appeared to complain of the North Eastern; and the general feeling in the district it serves appears favourable to its management." Since 1872 the Hull and Barnsley, an independent railway, has been sanctioned in the North-Eastern district, and the Cawood and Church Fenton, with other lines, have been promoted in connection with it.

² *Ib.* pp. 41, 42.

weening monopoly, each step towards which has been sanctioned by Parliament in its Private Bill legislation, with the almost unvarying opposition to amalgamation by public Committees and Departments. The Joint Committee of 1872 cite many facts to prove "that the general recommendations and resolutions of Committees, Commissions or Government Departments, have had little influence upon the action of Private Bill Committees, and have not stayed the progress of the companies in their course of union."¹ Amalgamation, said one witness, had followed amalgamation in an increasing ratio immediately after reports against amalgamation.² The Royal Commissioners, in 1867, gave the true explanation of this seeming antagonism:—"Attempts to guide Committees have invariably failed, because all Committees necessarily look upon the merits of the particular case before them, just as a jury does, and will not act upon principles of general policy as laid down by another Committee, when the justice of the case before them appears to render a departure from such general principles necessary."³

But the decisions have by no means been uniformly favourable to amalgamation. In 1867, the Midland Railway Company's Bill for amalgamation with the Glasgow and South Western was rejected. The same attempt was

Rejection or withdrawal of Amalgamation Bills.

¹ Report, p. 16.

² Evidence of Sir T. H. Farrer, Permanent Secretary to the Board of Trade, *ib.* p. 720.

³ Report, p. 20. And the Royal Commissioners elsewhere give their opinion to the like effect:—"It is a necessary consequence of the constitution of these Committees, and of the manner in which the business is conducted, that they should look to the merits of the special case entirely through the medium of the facts brought to their notice. It is not to be expected that they would act on grounds of general expediency which might appear to inflict hardship on

the parties actually before them. Moreover, no Committee, in which are vested what are practically absolute powers, would consent to defer its opinion to any general dictum given by another tribunal. In considering the case before it, the Parliamentary Committee looks upon itself as, and practically becomes, an independent Court of Appeal from any such general rules previously laid down, and from the decisions of any previous Committees which may have sat in former Sessions upon the same case." *Ib.* p. 42.

repeated in 1872, but failed. In 1866 Parliament allowed the absorption of the Scottish North Eastern line by the Caledonian Company.¹ Encouraged by this success, the Caledonian and North British Railway Companies promoted a Bill for amalgamation, and wished to include the Glasgow and South Western, in which case competition in Scotland would have ceased altogether;² but its prospects of success were so small that the Bill was withdrawn. The failure, in 1853, of a project for merging the Midland with the London and North Western Railway has been already mentioned.³ In the same year the same fate befel a Bill for fusing the London and South Western and Brighton Companies. In 1868 the South Eastern and Brighton Companies promoted a Bill "for establishing a working union" of these two Companies, with power to the Chatham and Dover Company to come in. That attempted combination also failed. In 1872 a Bill was promoted for an amalgamation between the London and North Western and Lancashire and Yorkshire Companies. This, and other proposals of the same character, gave rise to the inquiry of 1872. It was postponed till the year following, but was then unsuccessful. In several cases of minor importance amalgamation Bills have been rejected after patient inquiry.

Thus the powers given to Committees have not been exercised without discrimination, and while the general inquiries instituted by Parliament applied as a rule to abstract prin-

¹ 29 & 30 Vict. c. 350. To procure the assent of Parliament to this amalgamation, the Caledonian Company gave the largest facilities, as to through booking and running powers, which have yet been inserted in any railway Act. In like manner, the London and Birmingham and Grand Junction Railway Companies offered to accept reduced tolls and rates as a condition of their amalga-

mation. Parliament also forced the same tolls upon the Great Western Company, on their amalgamation with the Birmingham and Oxford line in 1847. A valuable *quid pro quo* was therefore obtained for the public in all these cases.

² Joint Committee of 1872; Minutes of Evidence, p. 36.

³ And see evidence of Mr. Allport, *ib.* p. 40.

ciples of policy, Private Bills have been judged upon precise evidence and argument as to the expediency or in expediency of amalgamations in particular cases. Indirectly the influence of Committees has no doubt had the effect of discouraging plans of railway amalgamation which would not bear the test of close inquiry as to their effect upon public interests. In other respects the same influence has been useful in keeping railway companies to their engagements: as when in 1869 the Midland Company were not allowed to abandon their Settle and Carlisle line, and when in 1855 a Committee inserted clauses in a South Western Railway Bill, suspending the Company's dividends, unless in the next Session they applied for powers to construct a new line to Exeter, which they had pledged themselves to make.¹ These are high legislative powers which may be justified on grounds of public policy, but could not be safely delegated to local authorities or to any fixed tribunal.

Railway companies kept to their engagements.

A provision already noticed in the Liverpool and Manchester, and some other Railway Acts, reserved to Parliament the right of revising the rates charged on traffic, when the dividends reached ten per. cent. No security, however, was taken in these special Acts, or in the analogous general legislation of 1844, for a public audit, which would have ascertained what profits were really made by railway companies; and the power, hereafter noticed, of issuing new shares at a premium, enabled companies to reduce dividends, while securing equivalent profits to shareholders, by increasing the capital value of their holdings. Before 1845, each special Act provided for the keeping of proper accounts by the incorporated company. In that year the usual clauses upon this subject were embodied in the Companies Clauses Act,² by

Accounts of railway companies.

¹ Sir Erskine May's Practice of Parliament, 9th ed. p. 852; South Western Railway (Capital and Works) Act, 1855.

² Sect. 115 *et seq.* The Railways Clauses Act, 1845 (8 Vict. c. 20), provides (s. 107) under penalties that

an annual account in abstract shall be prepared for transmission, if required, to the overseers of the poor in the parishes and to clerks of the peace in the counties through which the railway passes. Practically this provision is a dead letter.

which railway directors, in common with those of other companies, were bound to keep full and true accounts of receipts and expenditure; to set forth exact balance sheets half yearly, showing their "capital stock, credits, and property of every description," with the company's debts, and profit or loss; to provide for an independent audit by shareholders; to give shareholders opportunities of inspecting the accounts; to pay dividends out of profits only, and not apply dividends in reduction of capital.

Lords' Com-
mittee of
1849.

Four years after the passing of these general provisions, the House of Lords appointed a Committee, with a view to secure a more effectual audit of railway accounts, and guard against the application of the funds of railway companies to purposes unauthorized by Parliament. This Committee recommended that uniform accounts should be furnished by all railway companies, and should embrace the following (among other) particulars:—(1) A full statement of all the company's statutory powers of raising money, showing each undertaking to which they were applicable; and in respect of each Act, the mode in which the money had been raised, the nature of the securities issued, the conditions and rates of interest, the amount of money so obtained, and of arrears, and the balance of capital powers unexhausted. (2) A capital account, explaining how the money raised under statute had been disbursed. (3) An account of ordinary income and expenditure. The Committee also recommended that separate accounts should be kept for separate branches; the creation of a reserve fund; the grant to shareholders of further powers of inspecting accounts; the appointment of a Government auditor to act with the two auditors appointed by the shareholders; and authority to the auditors to call for all books and documents which they might think necessary for elucidating, not only the balance-sheet, but the whole financial condition of the company.

Bills embodying some of these provisions were introduced into Parliament in subsequent Sessions, but did not become law. Public opinion, which had been a good deal moved by

the discovery that railway accounts were sometimes "made pleasant," subsided into a belief that, after all, the cure for misleading accounts rested with shareholders in their choice of directors who were above misleading them. In 1867, however, the Royal Commissioners again called attention to this subject, and recorded their opinion that the law was at least defective in not securing uniform accounts:—"Each railway company is at liberty to adopt the form it considers most convenient, and to vary that form from time to time. The result is, that no adequate means are afforded by which to compare the financial affairs of two railways, or even to compare the accounts of the same railway, from time to time. This uncertainty deprives the public of the power of ascertaining the relative condition of different companies. It deprives one company of the means of profiting by the experience of another; and it leaves shareholders without an adequate check on the governing body."¹

Opinions of
Royal Com-
missioners,
1867.

Influenced by these considerations, Parliament, in 1868, provided that railway companies should keep uniform accounts, to be prepared half-yearly, according to certain prescribed models.² These comprise fifteen different statements showing (1) capital authorized and created by the company; (2) stock and share capital created, and proportion received; (3) capital raised by loans and debenture stock; (4) receipts and expenditure on capital account; (5) details of capital expenditure for half-year; (6) return of working stock; (7) estimate of further expenditure on capital account; (8) capital powers and other assets available to meet further expenditure; (9) revenue account; (10) net revenue account; (11) proposed appropriation of balance available for dividend; (12) abstracts of accounts relating to (a) maintenance of way and works, (b) locomotive power, (c) repairs and renewals of carriages and waggons, (d) traffic expenses, and (e) general charges; (13) general balance sheet;

Regulation of
Railways
Act, 1868.

¹ Report, p. 23.

² 31 & 32 Vict. c. 119, s. 3. The

forms of accounts are given in the
schedule to the Act.

(14) mileage authorized, constructed, and in working; (15) train mileage. These elaborate accounts must be signed by the chairman or deputy chairman, and by the secretary or accountant. They must be accompanied by a certificate from the engineer "that the whole of the company's permanent way, stations, buildings, canals, and other works have, during the past half-year, been maintained in good working condition and repair," and by a similar certificate as to the whole of the company's "plant, engines, tenders, carriages, waggons, machinery and tools, with the marine engines of the steam vessels."

False
accounts.

Examination
into com-
pany's affairs
by Board of
Trade.

Audit.

Borrowing
powers.

Any person signing the accounts or other particulars required by the Act, knowing them to be false, is liable to severe penalties, namely, fine and imprisonment, on conviction upon indictment; or £50 fine upon summary conviction.¹ Upon application made by the directors, or by shareholders representing two-fifths in value of the ordinary shares or stock, or by certain proportions of holders of debentures or preference capital, the Board of Trade may appoint "one or more competent inspectors to examine into the affairs" of a railway company and the condition of its undertaking. To these inspectors, or to inspectors appointed by the company itself at an extraordinary meeting, large powers of inquiry are given. Another change made in 1868 was to abolish a restriction² which prevented the appointment of an auditor who was not a shareholder of the company, and to authorize the Board of Trade, upon application by the directors, or by shareholders, at any general meeting, to appoint an auditor in addition to the company's auditors.³

By their special Acts railway companies were generally restricted from borrowing sums greater than one-third of their share capital. When estimates were exceeded, however, and continued outlay became necessary, they were

¹ 31 & 32 Vict. c. 119, s. 5.

² By Companies Clauses Consolidation Act, 1846, s. 102.

³ Regulation of Railways Act, 1868, ss. 11, 12.

often tempted to raise money beyond the amount limited by their statutory powers, in order to avoid the risk and the expense of a new application to Parliament. Among other means adopted to satisfy creditors, was the issue of loan notes, which were negotiable instruments purporting to secure the repayment, at certain dates, of money borrowed by a company. Such loan notes, being issued *ultra vires*, had no legal validity, and could not be enforced. At the same time they were "issued and received in good faith as between the borrower and lender, and, for the most part, for the lawful purposes of the undertaking, and in ignorance of their legal invalidity." Parliament, therefore, in 1844, taking this lenient view, confirmed such of these illegal securities as were then in existence, but for the future subjected railway companies issuing them to heavy penalties.¹

A successful attempt to escape from this legislation was made during the evil days which afterwards came upon railways. The prohibition of 1844 applied only to obligations given by railway companies for money advanced to them. But the limit which their special Acts imposed upon their share and loan capital might be, and was, as effectually evaded by giving obligations for debts contracted. A Committee appointed by the House of Lords in 1864 stated that the directors of some railway companies, without consulting the shareholders, and without the knowledge of the statutory debenture holders, had defeated the intentions of Parliament, and incurred obligations to a large amount by the issue of a security called Lloyd's bonds.² These obligations were given not for cash advances, but for services rendered, work done, or goods supplied for the purposes of the undertaking; and they represented an outlay in excess of the companies'

¹ 7 & 8 Vict. c. 85, s. 19. The words quoted in the text are taken from the recital to this section.

² A name derived from the astute counsel who drafted these securities.

Mr. Lloyd, however, stated to the Lords' Committee of 1864, that the bonds had been applied to purposes which he had never originally contemplated.

Parliamentary powers of raising money. The Committee also reported that the holders of Lloyd's bonds could sue and recover judgments against companies, and that success in any conflict for priority of claim between them and the holders of statutory debentures appeared to be only a question of more or less diligence.

Railway Companies' Securities Act, 1866.

No remedy against the issue of Lloyd's bonds could be suggested by the Committee, but in order that creditors of railway companies should be kept fully informed they recommended a system of compulsory registration of all railway obligations under mortgages, bonds or debentures. In 1866, Parliament accordingly required¹ that every railway company should register half-yearly, at the office of the Registrar of Joint Stock Companies, an account of their loan capital, showing the statutes under which the company had contracted any mortgage or bond debt existing at the end of the half-year, and the amounts (1) thereby authorized, (2) actually borrowed, and (3) remaining unborrowed. Many other particulars were to be supplied for the information of creditors. No company must borrow money until it had registered the Act which gave the power to borrow, and on every mortgage deed, bond or debenture there must be a declaration signed by two directors that the security was issued under the company's borrowing powers as registered at a given date, and was "not in excess of the amount there stated as remaining to be borrowed."² False statements made under this Act, if made with knowledge of their falseness, subject directors or officers to fine or imprisonment, a severity which marks the views of Parliament upon the railway derelictions of the period.

Capital powers of railway companies.

Another practice then prevailed, the effect of which was to withdraw railway companies for long periods from the control of Parliament, by asking for capital powers greatly in excess of proposed outlay. In 1846, Mr. Ellice reported, from a Committee on the Hull and Selby Purchase Bill, that the actual outlay and estimates for further works was

¹ 20 & 30 Vict. c. 108.

² *Ib.* Schedules 1 and 2.

955,363*l.*, whereas the money to be raised by the Bill was 2,000,000*l.*, exceeding the outlay and engagements of the Hull and Selby proprietors by nearly a million; and that in the Great North of England Purchase Bill, the actual outlay and estimate for additional works was 1,496,796*l.*, while the proposed capital was 4,000,000*l.*, an excess of over 2,500,000*l.* The Committee added that, in their opinion, "it would be greatly for the public interest that some fixed and uniform rules should be clearly laid down by the House for the guidance of their Committees with respect to the whole system of raising capital, loans," and other like questions.

A system, once common, and very lucrative to railway proprietors, was that of distributing new shares among them at par when the existing shares were at a premium. This practice first originated in special Acts, which authorized the raising of additional capital to complete a line when the original estimates had proved insufficient. It was justified on the plausible ground that to the shareholders, who had run the risks, belonged whatever advantages might accrue from the enterprise when its success was assured, and that they were as much entitled to the benefit of new capital legitimately required for the completion of their railway as if this capital had been included in the original estimate. The same argument did not apply when new capital was so raised, not for the completion of authorized undertakings, but for the construction or purchase of other lines; and in such cases shareholders were tempted by large immediate profits to sanction proposals not economical in themselves, swelling the amounts entitled to dividends, and sometimes raising the scale of rates and fares necessary for the payment of remunerative dividends.

New shares
issued at par.

The Companies Clauses Act, 1845,¹ allowed the conversion of portions of authorized loan capital into share capital unless it were otherwise provided by a company's special Act.² If at

General legis-
lation go-
verning issue
of new
shares.

¹ 8 Vict. c. 16, s. 56.

² In bills by which the profits of

companies are limited, the practice is now governed by S. O. 109 (H. of L.).

the time of any such conversion the company's shares were at a premium, the new shares were to be offered to the proprietors in proportion to their holdings.¹ This provision was introduced in order to secure for the proprietary an equal distribution of such shares, as it was thought that they were sometimes unfairly monopolized by directors and their friends. A similar provision, applicable to all new shares or stock, is contained in the Companies Clauses Act, 1863.²

Shareholders' gains from share premiums.

London and Birmingham Railway.

In the golden days of railway prosperity, there is evidence that enormous sums were realized by shareholders in the great companies, which obtained the capital for branches, extensions, or amalgamations, by issuing new shares at par when they were at a considerable premium in the market. For example, it appears that the shareholders in the London and Birmingham Railway received from the issue of new shares, down to 1846, 4,294,825*l.*, while their original outlay was 5,750,000*l.* Mr. Glyn, the chairman of this company, when asked in 1846 whether the branches and amalgamated lines were a loss, or what proportion of dividends they contributed, replied:—"We do not know the proportion; but as the shares have been created and issued in every instance to the proprietors, they reap the benefit of the profit arising from the whole concern; we treat it as one." "So that, whether you require capital to make a branch, or an extension, or improvements of stations, or whether you subscribe to other lines, the capital is provided in the same way in each case?" And his answer was—"Exactly in the same way, by the issue of new shares."³

¹ 8 Vict. c. 16, s. 58.

² 26 & 27 Vict. c. 118, s. 17.

³ Commons' Committee on Railway Acts Enactments, 1846; Min. of Evidence, pp. 111, 112. "Heavy as the original cost of the London and Birmingham line was, nearly the whole of it had been returned to the proprietors (in premiums) by 1846, and the two subsequent Ses-

sions supplied them with opportunities for large additional issues. The Manchester and Liverpool was at least equally productive in proportion to its extent. It would have been astonishing, indeed, if new schemes for branches, extensions, and the various other channels of expenditure, requiring new issues of shares, had not been urgently called

Mr. Hudson, when examined in 1846, explained the working of this system in the following evidence:—"Can you state what the proprietor of a 50% share in the York and North Midland would have obtained in the way of premiums upon the different issues?"—"Many men cannot hold; they are obliged to sell." "Supposing a man had purchased a 50% share, and held it from the beginning?"—"I should think it would be about 250%." "So that an original proprietor of 50%, if he had held it, would have received upon that 50%, in the way of premiums upon new shares, 250%?"—"Yes."¹ Thus the premiums received by holders of York and North Midland original shares amounted to five times their outlay; and as the original share capital was 1,500,000%, the premiums reached 7,500,000%.² Mr. Hudson also stated in 1846, that by an arrangement between the Newcastle and Darlington and the Great North of England Railway Companies, it was stipulated that the latter should receive ten per cent. on every 100% share until 1851, when they could claim to be paid off in four per cent. stock at 250% a share; thus creating a new nominal capital of 250% for every 100% share.³ He stated further, that, to meet a purchase by the Newcastle and Darlington Company, new shares were issued to the proprietors at par, when they were at a premium of 20%. The result was to reduce dividends by constructing, or taking over, on high terms, lines relatively inferior to the parent system in the power of earning revenue; at the same time giving to shareholders opportunities of making large profits by the sale of the new issues.⁴

York and
North Mid-
land Railway.

for by the shareholders. The desirableness of the new schemes, with reference to the permanent interest of the company, was at that time a secondary consideration. It was enough that in the then state of the market they would richly reward the existing proprietors; future proprietors must shift for themselves."—Influence of English Railway Legis-

lation on Trade and Industry (1848). By James Morrison, M.P., p. 56.

¹ Commons' Committee on Railway Acts Enactments, 1846, Second Report; Min. of Evidence, p. 239.

² *Ib.*, p. 232.

³ *Ib.*, p. 251.

⁴ This was the perhaps justifiable retort afterwards made by Mr. Hudson to his shareholders' complaints

Reduction in dividends thought prudent.

The reduction in dividends thus occasioned was generally foreseen, and sometimes was even desired. In some cases revenue was so large that directors thought it prudent to construct or acquire comparatively unproductive lines in order to lower dividends which might otherwise appear excessive. The process was described to the Committee of 1844 by a prominent witness, Captain Laws,¹ one of the most experienced railway managers of his time:—"There is the York and Scarborough line, a single line of rails from York, over a poor country almost all the way to Scarborough, which is a little fishing town on the coast of Yorkshire.² York and Scarborough shares are at 17½. premium, 2½. 10s. paid, and they are worth the money, because the line is amalgamated with the York and North Midland. That company will have a revenue sufficient to divide twenty per cent., but they look upon that as rather dangerous, and therefore they say, 'We will throw out a branch to Scarborough, and get ten per cent. upon that line, which of itself might not pay two per cent., and the same upon the Leeds and Selby line. If we can get ten per cent. upon all this, it comes to the same thing, and is much safer and more certain to retain than to be getting twenty-five per cent. upon a line from York to Methley.'"³

London and North Western Railway, 1880.

The practice has survived till later times. Thus, in 1880, the London and North Western Railway Company issued to their proprietors four million pounds of new stock at par,⁴ the

of reduced dividends:—"The new lines may be at first a charge upon the old ones, because it takes three years to develop the resources of a line. But if you receive smaller dividends for a time, it will be upon a larger capital, and you must bear in mind who has received those shares. The proprietors have received them, and they must recollect that a part of their profits have been derived from this source, whether they have retained or sold these ex-

tension shares."—Speech at half-yearly meeting of Midland Railway Company, Feb. 19, 1848.

¹ Then general manager of the Leeds and Manchester Railway.

² Forty years ago, the "queen of northern watering-places" might be thus described without offence.

³ Mr. Gladstone's Committee of 1844, Fifth Report; Min. of Evidence, p. 481.

⁴ Resolutions of Special General Meeting, May 6, 1880. The capital

100% stock being then at over 161%. This was an exercise by the company of capital powers conferred by eight Acts passed in the Sessions 1877-9. Each special Act of this description confers general authority on the company from time to time to raise for the purposes of their Act (and sometimes for the general purposes of their undertaking) by the creation and issue of shares or stock, such capital as they shall think necessary, not exceeding "the amount estimated for the particular works contemplated, exclusive of the capital which they are or may be authorized to raise by any other Act or Acts of Parliament; and the company may create and issue such shares or stock, either wholly or partially as ordinary, or wholly or partially as preferential shares or stock as they may think fit."¹ This common form of powers authorizing the issue of capital, as it is not controlled by general legislation, leaves railway companies free either to issue at par, making their shareholders a present of the premiums, whatever these may happen to be, or to appropriate the improved value of the stock or shares to the purposes of the undertaking.²

Special Acts as to issue of shares or stock.

The difference between the result of these two processes is obvious. Issues at par when shares are at a premium burden the undertaking with a permanent addition to its capital beyond what is necessary for the special purpose authorized by Parliament. Actual outlay on construction or purchase is not represented by such issues of shares or stock ;

Result of par issues.

so issued was to be paid by nine instalments, the last of which was due July 1, 1884. It was equivalent to a bonus of some £2,440,000, distributed among the owners of ordinary stock. At the same meeting resolutions were passed for the issue of £1,752,500 preference stock "at such times, to such persons, on such terms and conditions, and in such manner as the directors may think advantageous to the company."

These are the words of sect. 21, Companies Clauses Act, 1863.

¹ London and North Western Railway (Additional Powers) Act, 1879, s. 43.

² The London and North Western accounts for the half-year ending June 30, 1883, show among receipts on capital account a sum of 3,754,000% received as "premiums on issue of stock and shares."

a smaller issue of shares or stock would have sufficed for the purposes of the company but for the bonus distributed among the proprietors.¹ It follows that, if we treat railway companies as continuing bodies, dividends alone are no test of railway profits. New shareholders stand in a different category;² they receive dividends on a capital often very largely in excess of actual requirements. The practice was and is justified by railway companies on the ground that it is immaterial whether their shareholders receive increased dividends on smaller capitals or smaller dividends on larger capitals; this is a point which concerns the proprietors alone. It may be true that the public are now only indirectly concerned. The position was different when there was a prospect that the Act of 1844 would take effect. "If," it was said in 1846, "the rate of dividend is to determine whether the scale of fares shall be subjected to revision by the Government on behalf of the public, it is of the very first consequence that railway capitals should correspond with actual outlay. It may be the same thing to permanent proprietors whether they pocket large bonuses, and increase their capitals by sums exceeding, by the amount of such bonuses, the money laid out on their railways, and receive proportionably smaller dividends; but it is a very different thing to the public, if the scales of fares are to be governed by the rate of dividend, whether they pay high fares or low fares."³ Although these considerations no longer have any

¹ On the other hand the capital of some unprosperous railways has been reduced, as a condition of their amalgamation with other companies, to amounts greatly below actual expenditure. For example, the Oxford, Worcester, and Wolverhampton Railway Company, whose ordinary capital was 1,400,500*l.*, received 980,350*l.*, or seventy per cent. of their outlay; the South Devon, who had spent 1,569,665*l.*, received 1,098,766*l.*, also seventy per cent.,

upon their amalgamation with the Great Western.

² Prior to 1846, the French Government refused to allow the Paris and Rouen Railway Company, whose shares were at a premium, to issue new shares to the proprietors at par, on the ground that the rights of future proprietors would thereby be compromised.

³ Draft Report presented to Committee on Railway Acts Enactments, 1846.

practical bearing, it is well to remember that, for the reasons mentioned, the gross amount of railway capital in some cases largely exceeds the actual cost of railways in this country.¹

To the prosperous days when new shares bore high premiums succeeded days of adversity when some railway companies were compelled to raise capital at serious sacrifices. As to the issue of shares or stock at a discount, legislation has varied. If, when fresh capital was created by any company, its shares were not at a premium, it was authorized, in 1845, to issue new shares "in such manner, and on such terms," as it thought fit.² In 1863, companies were not allowed to dispose of new shares or stock for less than "the full nominal amount."³ This restriction was, however, repealed in 1869,⁴ so that, unless prohibited by the terms of their special Act, companies are now free to issue new shares or stock at a discount.

Issue of shares
at a discount.

By this mode of raising money, whether with or without express statutory sanction, the nominal capital of some railway companies largely exceeds the sum represented by their works and plant. Thus, out of the whole capital of the London, Chatham and Dover Railway, amounting in 1866 to 16,683,000*l.*, it was admitted that not less than 4,109,000*l.* had been dissipated in obtaining the rest from the public, and 1,948,000 more was disbursed out of capital for payment of interest and dividends.⁵ In the financial crisis of 1867, and at other periods, it has been necessary for Parliament to relieve railway companies from the full discharge of their

London,
Chatham and
Dover Rail-
way.

Statutory
relief to rail-
way com-
panies.

¹ For statistical, if for no other purposes, an interesting return would be one showing the new shares or stock issued by railway companies at par when their ordinary shares or stock were at a premium, and the amount thus divided among railway proprietors by way of bonus. A similar return of such issues at a discount, and of capital reduced upon amalgamation, would then

enable us to fix something like the actual outlay on British railway undertakings.

² 8 Vict. c. 16, s. 60.

³ Companies Clauses Act, 1863 (26 & 27 Vict. c. 118, s. 21).

⁴ Companies Clauses Act, 1869 (32 & 33 Vict. c. 48, ss. 5—8).

⁵ Royal Commission on Railways, Report, p. 38.

Pre-preference shares.

liabilities, and to postpone or abate the statutory rights of creditors. Such legislation was only to be justified in the public interest with a view to preserve a line for traffic, do equal justice to creditors, and secure as much as possible from the wreck for shareholders. As fresh capital was absolutely necessary for the purposes of companies in this position, Parliamentary Committees now for the first time were asked to sanction, and found themselves reluctantly obliged to sanction, the creation of pre-preference stock or shares, postponing the rights of shareholders who had a first claim upon the company's assets. To have refused such arrangements on the ground that railway companies had spent their capital improvidently, would merely have aggravated the evil, punishing innocent shareholders by completing the ruin of their undertaking, and possibly closing the line for public traffic.¹ It is a painful chapter in the history of railway legislation, but must not be passed over.

Caledonian Railway.

The first important Act of this description was passed in 1851,² for the relief of the Caledonian Railway Company. It recited a number of guaranteed and preferential dividends due under statutes to the proprietors of lines absorbed into the Caledonian system. These claims, with the interest on borrowed capital for which the company were liable, exceeded their whole available revenue. In consideration, therefore, of their embarrassments, the company's creditors agreed to abate a portion of the sums annually due to them. But the recitals to this effect did not set forth the whole difficulties of the company, who were "also indebted in a large amount to unsecured creditors on account of land, cost of works and plant, working expenses," and other claims. To prevent loss to all interests, as well as "serious inconvenience and injury to the public," and also to complete the authorized works, the company were empowered to raise further capital. Certain fixed annuities were secured to the guaranteed companies,

¹ Royal Commission on Railways, Report, p. 38.

² 14 & 15 Vict. c. 134 (Caledonian Railway Arrangements Act, 1851).

who agreed to take less than the amount to which they were entitled under the Acts by which they had handed over their respective undertakings. In return, they were authorized, in the event of non-payment, to appoint a judicial factor for the collection of revenues upon the lines over which their lien extended, and, after paying working expenses and other charges, retain the balance.

In 1867, the North British Railway Company found it necessary to promote a Bill to relieve them from similar difficulties.¹ Their authorized capital was then 15,641,000*l.*, of which a considerable proportion was not called up, but they could not provide the means for carrying on their undertaking, and their affairs had for some time before been in an embarrassed condition, complicated by the fact that "irregularities had occurred in the application of monies derived from capital and revenue." Certain sums which, "according to strict principles or preferable usage, were chargeable to revenue, had been paid out of capital; and the revenues had to a great extent been applied in paying debts strictly chargeable to capital."² A committee of shareholders had investigated the company's affairs, and found that their present and postponed liabilities amounted to 1,875,000*l.* In this case, also, after inquiry, Parliament, in the public interest, interposed to relieve the company from the full discharge of their liabilities.

North British
Railway.

In 1867 the Great Western Railway Company applied about 700,000*l.* of their net revenue towards paying off loans and other pressing debts, incurred on capital account, which would otherwise have involved the company in serious embarrassment and difficulty. Being thus unable to pay the dividends on certain guaranteed and preferential stocks and shares, the company authorized the directors to issue stocks and shares in lieu of those dividends. Proceedings were thereupon taken by a shareholder, and the Court of Chancery pronounced this issue to be *ultra vires*. It was, however,

¹ 30 & 31 Vict. c. 198; North British Railway (Financial Arrange-

ments) Act, 1867.

² *Ib.*; Preamble.

confirmed by Parliament upon representations of the inconvenience, hardship and loss which would otherwise arise to all parties.¹

London,
Chatham and
Dover Rail-
way.

Of these Arrangement Acts the most remarkable was one passed in the same year,² authorizing the London, Chatham and Dover Railway Company to raise money for the purpose of satisfying certain urgent claims, and relieving them from their difficulties. The story told in the recitals to this statute is singularly instructive, showing the complicated interests which grow up around a great railway, and the tangle into which its affairs may fall under the influence of financial disasters. The company were originally incorporated in 1853, under the name of the East Kent Railway Company,³ for making a line from Strood to Canterbury, with branches to Faversham Docks and Chilham. In 1859, under statute, they obtained their present style, and by thirty-four Acts, which at various times extended their undertaking or absorbed other lines, they acquired a system 100 miles in length, with metropolitan stations and termini of great value as feeders to traffic. But they became involved in numerous proceedings taken in the Court of Chancery with a view to settle the mutual rights and liabilities of the different interests absorbed, the priorities of the respective capitals, and the validity of certain leases and working agreements. Moreover, "by reason of the incomplete state of the company's undertaking and the undeveloped condition of their traffic," they were "unable to pay interest on their debenture

Preamble to
Arrangement
Act of 1867.

¹ See preamble to Great Western Railway (Dividends) Act, 1868, 31 & 32 Vict. c. 54. What occurred was this:—During the panic of 1866, the company, being borrowers on loans and debentures to the extent of some 13,500,000*l.*, were unable to raise money to pay off some of these debentures and for other capital purposes. They applied the net revenue of the line, which, after paying the

debenture interest, amounted for the year ending July, 1867, to 775,540*l.*, to the redemption of these loans; and therefore they desired to pay, and did pay, the dividends to their ordinary shareholders in six per cent. stock.

² 30 & 31 Vict. c. 209; London, Chatham and Dover Railway (Arrangements) Act, 1867.

³ 16 & 17 Vict. c. 132.

tures or to discharge certain other claims," and their debts were declared to be "large and constantly increasing." Their whole undertaking was then in the hands of receivers appointed by the Court of Chancery at the instance of debenture holders. To avoid the stoppage of traffic, the company executed a deed, assigning all their rolling stock and other chattels to trustees upon trust for the debenture holders and all other creditors; the rolling stock being used for the purposes of the line at a rent payable to the trustees. The Act also provided that for a period of ten years, defined as "the suspense period," all suits and other proceedings against the company and their property with respect to existing debts should be stayed; the management of the undertaking was vested in a board, on which both mortgagees and shareholders were represented; new debenture stock of three classes was created, having certain priorities; special powers were given to the Court of Chancery for the settlement of the company's affairs; and the mortgagees and shareholders were authorized to compromise and readjust their respective rights and liabilities.

"Suspense period."

Carefully considered as it was, this legislation proved insufficient. In 1869, owing to the number of claims brought before the Court, and their complicated nature, no final order had been made. It was felt that the cumbrous and slow-working machinery of Chancery was unsuited for dealing with so great a variety of conflicting interests, and that some more speedy method was necessary for determining the relative rights of litigants. Two years' experience had shown that the company's revenues and property were "undoubtedly inadequate to satisfy the legal claims of the mortgagees and of the preference and other shareholders," even when the relative rights of all parties had been ascertained. Under these circumstances it was thought "indispensable that discretion should be placed in arbitrators specially constituted for the purpose, to determine not only the rights of the several parties, but also the most equitable method of re-

Recitals in Arbitration Act, 1869.

arranging, modifying, fusing, and reconstituting the capital of the company, and of providing for the satisfaction of the legal and equitable rights and liens of general creditors," and for the settlement of the affairs of the company, "as fully and effectually as could be done by Act of Parliament."¹

Lord Salisbury and Lord Cairns appointed arbitrators.

In view of the expediency on public as well as private grounds of relieving the company from its difficulties, Parliament gave effect to these proposals.² The arbitrators were the Marquis of Salisbury and Earl Cairns. They were named in the Act, and their decision in all matters was to be "final and without appeal."³ If they differed in any matter, they might appoint "an impartial and qualified person to act as umpire" between them; and his decision, with that of either of the arbitrators, was to have the same force as the decision of the two arbitrators acting jointly. Their powers were of the widest character and were really equivalent to legislative powers within the limits assigned by the Act. They were to settle (*a*) the relative rights, liabilities and interests of shareholders and creditors, and to determine the order and priority of all charges on the company's property and assets; (*b*) to distribute and apply any money then in the hands of the company or of the Court of Chancery, as well as of the company's future net revenue, in such manner as they thought most equitable; (*c*) to decide upon the legal and equitable rights and interests of all persons interested in the subsidiary railways leased or worked by the company, and upon the arrangements which ought to be made in these cases; (*d*) to decide also upon the legal and equitable rights,

Sect. 17.

¹ Preamble to 32 & 33 Vict. c. 116; London, Chatham and Dover Railway (Arbitration) Act, 1869.

² In case of vacancies, Lord Salisbury's place was to be filled by an arbitrator appointed by the Lord President of the Council for the time being; the successor of Earl Cairns was to be appointed by the

Lord Chancellor. It was also provided that he should be either an ex-Lord Chancellor or a member of the Judicial Committee of the Privy Council who had been a judge of one of the Superior Courts of law or equity in England (sect. 27).

³ 32 & 33 Vict. c. 116, s. 16.

liens and priorities of the company's general creditors, and the manner in which, and the funds out of which, these claims should be met ; (e) to determine all pending actions or suits at law or in equity in which the company was a party as plaintiff or defendant, or in any other capacity. Finally, after ascertaining and determining these groups of questions, the powers of the arbitrators extended—

“To fuse and consolidate, upon such terms and subject to such conditions as they shall in the circumstances think most equitable and expedient, all or any of the separate undertakings, sections, divisions, and capitals of the company, and whenever, and to any extent in which it shall appear to them that by so doing substantial benefit will accrue to all parties interested, or injury to them will be avoided, and the prosperity of the whole undertaking promoted; to arrange, abate, adjust, and reconstitute and capitalize the company's borrowed and share capitals, funds, rent-charges, separate stocks, interest, arrears of interest and dividend, deferred dividend warrants, debts and liabilities of all kinds, as in the circumstances seems to the arbitrators most equitable and expedient ; and to convert the same into such debenture, preference, or other stocks as the arbitrators shall direct ; and such stocks shall be taken and accepted in lieu of the borrowed and share capitals, funds, rent-charges, separate stocks, interest, arrears of interest and dividend, deferred dividend, warrants, debts and liabilities, for which the same are substituted respectively ; and the arbitrators shall also have power by their final award to settle a scheme for the reconstitution and future government of the company.”

Sect. 17, sub-
sect. (f).

As between the company and all other persons, the arbitrators might settle all these matters “not only in accordance with the legal and equitable rights of the parties as recognized in the courts of law and equity, but upon such terms and in such manner in all respects as they in their absolute and unfettered discretion may think most fit, equitable, and expedient, and as fully and effectually as could be done by Act of Parliament.” All actions, suits and other litigation pending when the Act passed were transferred to the arbitrators, except proceedings against the company as common

Sect. 22.

Sect. 23.

Sect. 24.

carriers, or relating to the investment and payment of money under the Lands Clauses Act; and during the arbitration, save in these two matters, the jurisdiction over the company of all courts of law or equity was suspended.

Awards under Act.

A first award under this remarkable statute was made in August, 1870, and a second and final award in February, 1871. Both are scheduled to an Act obtained by the company in 1871.¹ While, technically, this is private legislation, and is limited to private interests, it clearly involves, as the preambles of most other private Bills involve, questions of principle and policy which are of especial importance on public grounds, and could not be properly dealt with except by Parliament as a part of its high legislative functions.² It

¹ 34 & 35 Vict. c. 131; and see 37 & 38 Vict. c. 54; 39 & 40 Vict. c. 84. Lest it should be supposed, from the examples in the text, that England and Scotland have a monopoly of these statutes, reference should be made to the Neath and Brecon Railway Act, 1869 (32 & 33 Vict. c. 145), suspending legal proceedings against that company, authorizing them to borrow money with priority over their existing loan capital, and otherwise arranging their affairs; and to the Newry and Armagh Railway (Arbitration) Act, 1870, for the arrangement by arbitration of the affairs of that company (33 & 34 Vict. c. 108).

² Some parallel to the exceptional legislation noted in the text is that of 1871 and 1872, relating to the Albert and European Life Assurance Companies. Both had absorbed many smaller institutions, and then fallen into financial difficulties. The complicated claims and interests relating to the amalgamated institutions (which themselves represented several kindred institutions) and to the shareholders in these two companies were settled by arbitration under the following private Acts:—

As to the Albert Life Assurance Company, 34 & 35 Vict. c. 31; and 37 & 38 Vict. c. 58. As to the European Assurance Society, 35 & 36 Vict. c. 145; 36 & 37 Vict. c. 9; and 38 & 39 Vict. c. 157. Earl Cairns acted as arbitrator in the case of the Albert Company. Lord Westbury was appointed to the same office in the affairs of the European Society, and on his death was succeeded by Lord Romilly. Unfortunately, in some cases of great importance affecting the European liquidation, the second arbitrator differed in opinion from, and varied the orders of, his predecessor. It was therefore thought expedient, in the Act of 1875 last cited, to provide for an appeal in certain cases, though with a view to a more speedy end of litigation, the original Arbitration Act prohibited all such appeals. On the death of Lord Romilly, the arbitration was continued and concluded by the late Sir Francis S. Reilly, afterwards counsel to the Speaker. In the case of both companies, the arbitrators not only received authority to act as judges in the Court of Chancery, but, so far as concerned

may be said that in these Arrangement Acts Parliament confessed its helplessness and delegated its powers. But Parliament did not take this course without first carefully considering the expediency of such a delegation in each instance, and coming to the conclusion, as a Court of law does on hearing the main facts, that it was not competent to deal with so complicated a case. Moreover, Parliament, in referring these cases to arbitrators, carefully defined their jurisdiction with reference to the peculiar circumstances of each reference, and took care also that the arbitrators should be men of the highest authority.

Delegation of
statutory
powers.

The Lords' Committee of 1864 could "see no reason why railway companies should continue altogether free from the adjusting process to which other trading companies are liable through proceedings in bankruptcy." On the contrary, the Committee were "of opinion that the present practice, by which the affairs of companies practically bankrupt are patched up by successive Acts of Parliament, is injurious to the public, and too frequently of no real benefit to shareholders." If a company paid little or no dividend on its original capital, working expenses were often cut down injuriously, and the public suffered from insufficient service, high fares, and illiberal management. When, therefore, a railway company became seriously embarrassed, the Committee thought it would be for the public advantage that the line should be transferred to others by whom it might be more efficiently conducted.

Insolvency of
railway com-
panies.

Parliament did not adopt this recommendation, but by general legislation in 1867 it did provide more summary and effectual methods for extricating insolvent companies from their difficulties.¹ First, in order that public traffic may not be interrupted, rolling stock and plant are pro-

Railway
Companies
Act, 1867.

any of the matters referred to them, their jurisdiction extended to India, Canada, the Australian colonies, and

all other parts of her Majesty's dominions.

¹ 30 & 31 Vict. c. 127.

ected from liability to be taken in execution.¹ When a railway company are unable to meet their engagements, the directors may prepare and file in the Court of Chancery a scheme of arrangement with their creditors, providing for the raising of fresh capital. After a notice in the *Gazette* of the filing of the scheme, no execution or other process is available against the company's property without leave of the Court. If the directors can, within a certain period, obtain assents to the scheme from specified proportions of the mortgagees and other creditors, and of the guaranteed or preference shareholders whose interests are prejudicially affected, the Court may confirm the scheme, which, upon enrolment, becomes binding and effectual. By this machinery, if suited to the case, an application to Parliament for a private Bill becomes unnecessary.

Promotion of
competing
railways.

At various times, it will be gathered, there have been keen discussions upon the expediency of granting powers for the construction of railways competing with authorized lines. No subject has more frequently occupied the attention of Private Bill Committees, and upon no subject have there been greater differences of opinion among the members of these Committees. The reason is that each case varies according to the prospects of traffic and remunerative revenue, the good faith of promoters, the engineering merits or demerits of the proposed line, its effect upon public roads and navigable rivers, the capacity of existing railways to accommodate the district, the opposition or support of landowners, and many other considerations, so that no hard and fast rule can be laid down as applicable to all cases. The issue to be tried, in fact, is not and never can be purely judicial; it is whether, upon a balance of conflicting interests of a more or less private character, the public advantage requires that a competing line should be sanctioned.

¹ This privilege, a temporary one in the Act under notice, is now made perpetual by 38 & 39 Vict. c. 31.

There are two ways of dealing with proposals by a new company to make a competing railway. One is to take guarantees from the promoters for its construction; to provide for public interests in respect of tolls and fares, any displacement of labouring classes, level crossings, bridges across roads or rivers, and other questions of this nature; and then assume that the promoters would not risk their money upon an unremunerative scheme, refuse to recognize competition of existing companies as a ground for opposing it, leave future shareholders to take care of themselves, and reserve to landowners no more than the bare protection which they already enjoy under the general law in the shape of a right to accommodation works and compensation for land taken or injury done. This method has the merit of simplicity and expedition. The other, and, it is submitted, the more just method, though a slower and more difficult one, is that under which a Parliamentary Committee now calls upon promoters to make out a case of public necessity for their line, and afterwards hears all that can be said against it by petitioners; paying due regard, but no more than due regard, to any public or private interests which may be injuriously affected, including the qualified rights in the traffic of the district conferred by statute upon existing railway companies.

Principles
determining
railway
legislation.

Whether these questions relate to a new railway, or to any other opposed project, it is clear that in many cases they may be by no means easy of solution. It is idle, too, upon such questions to look for that uniformity of decision, the want of which is sometimes charged against Parliamentary Committees. In no two cases are the facts identical. Were they even identical, different men will take different views upon questions of expediency and policy, just as their views will differ upon public measures not of a party character. For example, here is a case not unfrequently arising:—A responsible body of promoters, including landowners anxious to open up a district, and local traders and townspeople desiring improved railway facilities, seek to make a new line. It is not a con-

Uniform de-
cisions not to
be expected.

Conditions of
competition to
be weighed.

tractors' or speculative line, but a *bonâ fide* project, honestly promoted for the benefit of a locality. Its starting-point and terminus, however, are points which it has in common with an existing railway, though the intervening routes differ. The company already serving these common points oppose the project on the ground of competition. What respect should be paid by Parliament to their vested rights, if any? The main argument urged by them is that the local traffic upon the proposed line will not pay; that the through traffic will not be enough to support two lines, and is fairly accommodated by them already; that the result will be probable disaster to the shareholders, ending (it may be hinted) not in competition, with improved and cheaper services for the through traffic which must be the mainstay of both companies, but in combination, so that in the result the public will have to pay for making and maintaining two lines in a district which can properly support but one. On the other hand, the promoters are sanguine that, if sufficient traffic to support both lines does not already exist, it will speedily be developed. At all events they are willing to spend their own money in trying the experiment, and believe they will obtain the remaining capital from other sources. This, in its simplest form, and dismissing all other grounds of opposition, is one of the issues often presented to Committees on Railway Bills. Even in this form it sometimes involves complicated problems of finance, engineering outlay, local and through traffic, station accommodation, and other considerations. The chief question, however, though it does not always lie on the surface, is how far a Committee will give effect to the conditional rights of existing railway companies whose traffic may be injured by competition. The partial recognition of these rights by high Parliamentary authorities has already been mentioned.¹ Some more specific notice of this still hotly-contested question may now be useful.

¹ *Ante*, pp. 87, n., 97, 98.

In the Committee of 1844, the views for and against the vested rights supposed to be acquired by railway companies cannot be better illustrated than by some extracts from Mr. Gladstone's examination of one of the ablest representatives of the companies:¹—

Vested rights of railway companies examined by Committee of 1844.

If there were now before Parliament a body of persons willing to make a new railway from London to Birmingham, and offering to place themselves under restrictions to carry passengers at two-thirds of the present fares, should they obtain their Bill?—No, I should object to it on this principle, that you have made a bargain with the London and Birmingham Railway Company. If you can show that they offer impediments to trade, or use their power unfairly as regards the public, if their rates are a discouragement to traffic, you retain in your hands the power of remedying it.

Where do you find a bargain between Parliament and the railway companies, except in the Acts under which these companies are constituted?—These are the bargains which I speak of.

Is there any bargain, express or implied, in those Acts of Parliament to discourage the formation of competing lines?—On the contrary, I say competition is not the bargain. I say you hold the power of competition in your hands. If, instead of moderate fares and remunerative rates, they charge their maximum rates, if there is any misapplication of the power you have granted them, you reserve to yourself the power of granting a competing line. That is a power which I say you ought to retain; I do not think you ought to fetter it.

You ought to retain it, but not to use it?—You ought to use it, I think, when there is a misapplication of the powers given to the company.

In case the powers granted by Parliament are not exceeded, should a competing line be granted?—Not if the work is properly done. We all see and know the result when twice the capital necessary for accommodating traffic is expended. The two competitors at last come to terms, and then must draw from the public, as a remuneration for the capital so expended, a larger sum than would have been required for the smaller expenditure. . . .

Would it be fair to say to a company, "We will give you your choice. If you make a reduction in your terms we will reject the Bill for a new line, but if you will not we will

¹ Mr. Saunders, then Secretary of the Great Western Railway.

sanction it?"—I think it would be a very unfair thing to do. It is very much of a piece with the highwayman who says—"Your money or your life!" I think it would be considered as ungenerous, and so unfair that it would recoil ultimately upon the public.

You think that Parliament should refuse powers to the promoters of the new line, although they might offer to carry the public at two-thirds of the present charge?—I hold that Parliament should; and I am confident they would.

Assume that Parliament would act on the opposite principle, and grant Bills whenever they find parties willing to carry on better terms?—Then the policy of Parliament would, in fact, be to enforce new competition without regard to necessity, unless a company should refuse to reduce its charges below those at which it can afford to carry the traffic.

The London and Birmingham charge 30s. for first-class and 20s. for second-class passengers to Birmingham. If a body of persons competent in respect to capital were to offer to carry first-class passengers at 20s. and second-class at 15s., should they get their Bill?—Most undoubtedly not. You will be introducing a destructive principle, and authorizing competition whether necessary or not.

Do you think railways ought to be invested with a patent right of carrying passengers between two places?—Subject to certain conditions, I do; and I contend that you would be doing the greatest possible injustice if, when it can be shown that a company by economy and proper management, and not by over-charges, have been successful, you were to break down their success by competition.¹

Opinion of
Committee as
to new com-
petitive
routes.

Notwithstanding the tenor of this examination by the Chairman, the Committee of 1844, it will be seen, recommended that no step should be taken to impair "the integrity of privileges already granted" to railway companies; and

¹ It is an instructive commentary upon this evidence, given by a trusted officer of the Great Western Railway Company, to remember that, a few years afterwards, the same company obtained access to Birmingham and began an effective and useful competition with the North Western Company for through traffic between London and Birmingham. This new

route was opened by an extension of the Oxford and Rugby line from Fenny Compton to Birmingham, and apart from its value as a competing through route, was easily justified for local reasons—the necessity of accommodating the towns of Oxford, Banbury, Warwick, Leamington, and Birmingham.

though they recognized "nothing in the shape of a vested interest," as defined by them, this language, and "the just and equitable dealing" which they thought Parliament was bound to secure for existing companies, appear to show that, in their view, competition was always an element to be considered, for whatever it might be worth, in determining the grant of powers to new railway companies. Before the meeting of Parliament in 1846 a scheme was said to have been prepared by Sir Robert Peel's cabinet for submission to Parliament with a view to determine which of the numerous competitive Railway Bills then promoted should be allowed to proceed. This proposal was not adopted, and Committees were left, as they still are, to form their own conclusions upon the projects brought before them.

Railway competition in 1846.

As the Government took no steps to prevent the promotion of competitive railways, tending to diminish the profits of existing companies, the latter sought to protect themselves as they best could, and justified their many unprofitable extensions and amalgamations as measures forced upon them by the leave-alone policy of the Government. In 1848, for example, when railway dividends had been greatly reduced by this process of depletion, the Chairman of the Great Western Railway, addressing his proprietary, admitted that the Company's engagements were extensive, but said "they had been entered into only as a matter of necessity. They all arose out of the mania of 1845-6. He had not only not promoted these projects, but had taken every means in his power to check them. In his place in Parliament in January, 1846, he had predicted the results if some steps were not at once adopted to curb reckless speculation. Most unfortunately for all parties, that was not the view which was taken by the House of Commons. Mr. Hudson and other gentlemen maintained that the course he recommended would be an unfair interference with private enterprise.¹ The Great

Existing railway companies promote new lines in self-defence.

¹ But a few days before this speech was made, Mr. Hudson, addressing the Midland Railway shareholders, said, "The Legislature and public

Western had remonstrated in vain with the President and Vice-President of the Board of Trade; and, left to their own resources, they had been compelled in self-defence to look to their own interests, by getting hold of all the rival or contemplated rival lines."¹

Competition,
effect of, in
lowering
rates.

Mr. Robert Stephenson, when asked whether competing railways would not lead to lower rates and fares, replied:—"I have had many cases of that kind brought before me, and have come to the conclusion that, wherever combination is practicable, competition is impracticable."² Therefore, I say, let the Government be as stringent as they like with existing companies, but never excite competition, because by exciting competition you increase the capital invested for giving the same convenience, which would be otherwise obtained with less capital."³ The lapse of forty years has brought about many changes in the conditions of railway traffic, and this opinion must now be received with some qualifications. For example, apart from the great increase of through traffic, as every new railway opens up to some extent new ground, and provides for new local traffic, now often considerable, these intervening districts have rights to consideration, as well as termini already accommodated by existing lines.

Conclusions
of Joint Com-
mittee of
1872, as to
competition.

The Joint Committee of 1872 pronounce, in substance, the same opinion as that given in 1846 by Mr. Stephenson. "A new line," they observe, "is sure sooner or

opinion had forced these new undertakings upon the company; for if they had not thrown out new arms and branches, the proprietors would have found their property irretrievably injured."

¹ Meeting of Great Western Railway Company, February 23, 1848. At this period of depression, railway meetings were sometimes, as Mr. Hudson described them, "of a tumultuous character."

² The competition here referred to is probably the continued charge by one company of lower rates and fares than those of a rival company. In this sense, Mr. Stephenson's view is no doubt accurate. It is also true, that, except between Liverpool and Manchester, and in a few other cases, rates and fares have been settled by agreement between competing companies.

³ Commons' Committee on Railway Acts Enactments, 1846.

later to join the combination of existing railways, and to make common cause with them." At first it may cause great reductions in their rates; in the end, when combination has become complete, "it will undoubtedly injure their capital, by abstracting a portion of their profits." Potential competition, the Committee admit, has had a powerful effect in preventing high charges and in securing reasonable facilities by existing railway companies. But this influence "has less and less operation every day. Experience has shown how unprofitable the making of rival lines has often proved to the shareholders. Each large company is getting more and more command of its own district. It becomes less and less possible for a rival company to establish the ramifications of new lines and feeders which are necessary for its success; and Parliament, under such circumstances, is less and less called upon to authorize competing lines. Indeed, having in view the public benefit alone, it is an important consideration that the necessity of carrying interest on the additional capital required for the new line tends sometimes in the end to raise rather than reduce rates."¹

This passage seems to convey a somewhat too easy acquiescence in the monopoly of existing lines. It overlooks the vast expansion of traffic which, in busy centres, may sometimes overtax the resources of one railway system. It overlooks, also, the fact that every new line must confer signal advantages upon the district which it traverses.² Where there is competition the public benefits from the new facilities given for through traffic; and it must be remembered that, though uniform fares may be charged on competing systems, these

Growing
reasons
against
monopoly.

¹ Report, p. 27.

² This general proposition is not inconsistent with such exceptional instances as those of the East and West Junction Railway, thirty-three and a half miles long, which was practically closed for some years, or the Halesowen Railway, seven and a

quarter miles long, and worked by the Great Western and Midland companies, which represents an outlay of 219,000*l.*, has been the subject of seven Acts of Parliament, and does not yield enough traffic to pay working expenses.

fares often represent considerable reductions from time to time made, and at length settled by agreement at the lowest paying point. To take one instance only, it must be of great public advantage that three companies instead of one now compete for through traffic between London and Manchester. In 1858 only nine passenger trains ran one way and eight the other between these two centres. In 1885, on each weekday there were thirty-one passenger trains upon the three systems from London to Manchester, and twenty-nine from Manchester to London. Express fares have been abolished; third-class carriages are attached to every train; and the accommodation is cheapened and in every way improved.¹

Metropolitan
railways.

Lord Can-
ning's Com-
mission, 1846.

The Metropolis has been an exception, but by no means a successful exception, to the rule of leaving railway communication to be provided without restraint by private enterprise and competition. At the instance of Parliament, in 1846, a Royal Commission was appointed to enquire into and report upon some schemes then projected. The Commissioners recommended that any railways within certain defined limits should be made "in conformity with some uniform plan carefully laid down under the authority of the Government, and sanctioned by the wisdom of Parliament; and that under no circumstances should the thoroughfares of the Metropolis, and the property and comfort of its inhabitants, be surrendered to separate schemes brought forward at different times, and without reference to each other."

First under-
ground rail-
way in
London.

The result of this Report was to delay for several years the construction of all railways within the prescribed limits, notwithstanding the undoubted need for such accommodation. In 1853, however, Parliament sanctioned a railway to run under the New Road from Edgware Road to Battle Bridge.

¹ See evidence of Sir Edward Watkin, Min. of Evidence, given in 1872, p. 436. He states that the whole of Lancashire and Yorkshire, as well as London, benefited from this competition. On the other hand

Mr. Cawkwell (ib. p. 625) denied that competition then existed between London and Manchester, owing to a joint purse arrangement between the North Western and Great Northern Companies.

A Bill for an extension of this line to Farringdon Street was also proposed, but the Government of the day intervened, and Mr. Cardwell, then President of the Board of Trade, announced their decision. With Lord Palmerston, Lord Canning, and Sir William Molesworth, he had considered the scheme of Mr. Pearson very carefully. It did not seem to them that this scheme fulfilled the conditions which were contemplated by the Commission of 1846; and the Government, therefore, opposed the second reading. The Bill was in consequence abandoned; but afterwards the Government determined not to attempt any further control, and in 1854 Parliament sanctioned, under the name of the Metropolitan railway, an extension of the North Metropolitan scheme of 1853 to Paddington, joining there the Great Western line, and eastward to the Post Office, communicating on its way with the London and North Western and Great Northern railways.¹

Government
veto upon
proposed
underground
extensions.

Mr. Pearson's plans contemplated a combined system of railway communication within the Metropolis and of street improvements, carried out by means of railway companies in conjunction with local authorities. Such was the scheme sanctioned by Parliament for completing the Metropolitan Inner Circle system by an extension of the Metropolitan District to a junction with the Metropolitan line *via* Tower Hill; the City Commissioners of Sewers and the Metropolitan Board of Works contributing 500,000*l.* towards the cost of a new street between Eastcheap and Fenchurch Street.² Such also was, in effect, the plan proposed in the Parks Railway Bill, rejected in 1884, for an extension from the Metropolitan railway near Praed Street to Parliament Street, the railway company undertaking to make certain street improvements at

Plans of Mr.
Pearson, the
City solicitor.

Metropolitan
Inner Circle.

Parks Rail-
way Bill, 1884.

¹ Metropolitan Railway Act, 1854 (17 & 18 Vict. c. 221), repealing North Metropolitan Railway Act, 1853. Royal Commission on Railways, 1867, Report, pp. 26, 27.

² For this important link, authorized in a somewhat different form in 1874, several subsequent Acts were necessary. It was not opened until October, 1884.

the latter terminus as the price of the concession to burrow beneath the parks.

Commons' Committee of 1855 on Metropolitan communications.

This method of economizing expenditure by combining railways with street improvements obtained the approval of a Committee of the House of Commons on Metropolitan communications in 1855. The Committee also recommended "that the different Metropolitan railway termini should be connected by railway with each other, and with the docks, the river, and the Post Office, so as to accelerate the mails, and take from the streets all through traffic, not only of passengers, but in a still more important degree of goods."

Lords' Committee of 1863.

Another Committee upon the same subject was appointed by the House of Lords in 1863. They suggested a very considerable enlargement in the limits within which, according to the recommendations of the Royal Commission in 1846, the Government and Parliament should exercise control and insist upon uniform plans of railway communication. The Committee were in favour of an inner and an outer circle of railways in London, to be constructed by preference in tunnel, and connecting the principal railway termini. They thought "it would be objectionable to allow the construction of a great central station in the Metropolis,"¹ and they were of opinion "that every system of internal railway communication for the Metropolis should be under one management."

Joint Committee of 1864.

A joint Committee of the two Houses was appointed to consider the same subject in 1864, and followed, substantially, the recommendations of 1863. But the fresh schemes afterwards brought forward, and authorized, departed from the suggestions both of the Lords' Committee of 1863 and of the joint Committee, "and practically rendered every recommendation of the Royal Commission of 1846 a dead letter."²

¹ The rejected bill for the Great Western Railway in 1834 proposed a joint station in London for the Great Western and the London and North

Western systems.

² Royal Commission on Railways, 1867, p. 27.

In the foregoing pages some of the main features in the growth of the British railway system have been rapidly sketched. The practical test by which railway legislation, as well as railway administration, must now be judged is whether, having regard to the policy of regulated competition adopted in this country, and the costly struggles which it has occasioned, the rates and fares which railway companies charge, and the facilities they offer to the public, are, on the whole, open to reasonable complaint. To this very important consideration some space must now be devoted. It is too late to reproach either Parliament or railway companies for what has been done amiss in the past. By mapping out the country and assigning to various companies the possession of certain districts, Parliament might doubtless have saved much outlay, and prevented frequent territorial struggles between the great companies. On the other hand, such a system must have had many defects: it would have failed to satisfy the public that they were enjoying such advantages as a free trade in railways would have given them; and they would have had none of the limited competition from which they now benefit, probably in rates, certainly in accommodation.¹ Again, the

Existing rates, fares and facilities a practical test of railway legislation and administration.

Past policy of Parliament and of railway companies.

¹ "Whatever may have been the contradictions in the course of legislation which has thus been pursued, it cannot be doubted that it has led to a very rapid development of the railway system, and consequently of the national resources, probably far more rapid than could have taken place under any other conditions, and has induced improvements in the construction and working of the railways which, with the spirit of emulation engendered by it, must have taken years to attain. Thus, whilst in France there is less than one and a quarter miles of railway, in England and Scotland there are two and a half miles of railway to 5,000 in-

habitants." (Royal Commission on Railways, 1867, Report, pp. 27, 28.) And at p. 37 occurs the following passage:—"The French Commissioners, who reported in 1863 upon the construction, working and management of French railways, while vindicating their own system, observe:—"One understands the complete liberty of action left to the English companies by their special Acts in the country of free competition, where the antagonism between private interests, constantly in presence of each other, has long been recognized as an essential condition for duly protecting the public interests. By virtue of this system, which

companies, it may be said, should have shown less jealousy of intrusion and less desire for annexations and conquests of new territory. Their reply no doubt would be that they have been forced to act in self-preservation; that a great railway company cannot afford to sit still and merely hold its own, but must be prepared to resist aggression, and meet new wants of traffic even in advance, or see its interests seriously endangered by more enterprising rivals. Taking, then, the railway system as it has grown up, with all its anomalies and defects, and with the burden of expenditure forced upon it by a State policy of regulated competition, as well as by rigid Parliamentary safeguards for the protection of private interests, we may now enquire what has been done by private and public statutes, or by the voluntary action of railway companies themselves, to limit rates and fares and increase facilities, and what is the latest result of inquiry upon this all-important subject?

Legislation
favouring
competition
by canals.

In order to keep down railway rates, Parliament has, at various times, by means of general legislation, done what it can to enable canals to compete with railways. In 1845, it gave to canal companies like powers to those already conferred on railway companies for varying their rates.¹ In the same year, and for the same object, canal companies, like railway companies, were authorized to become carriers of goods on their canals.² Some competition for traffic, it was hoped, might thus arise. As in certain cases the links of

has been applied without reserve to railway concessions, very active competition exists between the English railway companies, so much so that, as soon as the apathy or want of intelligence of one company allows the service of its line to deteriorate, a new enterprise springs up, and by offering greater facilities to the public, appeals to the trade of the country, and forces the first company to bring its working up to the level of public requirements. In France,

the absence, almost complete up to the present time, of all competition among railways, discards the valuable equilibrium which is the safeguard of British industry.”

¹ By 8 & 9 Vict. c. 28, the preamble of which sets forth that it would be for the public advantage if powers of this nature, given to railway companies by the Railways Clauses Consolidation Act, 1845, were also given to canal companies.

² 8 & 9 Vict. c. 42.

canal were too short to make such competition effective, the same Act, by analogy again with what had been done for railways, allowed working arrangements between canal companies, or the lease of small systems to other canal companies, with a view to the opening-up of through water routes. In 1847, express powers of borrowing money for these purposes were conferred on canal companies.¹

But to secure the full advantage of competition by canals, Parliament should from the first have refused to sanction the absorption of any canals by railway companies, save in very exceptional cases.² As the Joint Committee of 1872 point out, railway companies have more than the usual motives for suppressing the rivalry of a canal, and for putting an end to its traffic. "On railways they are carriers as well as owners of the road. On canals, they carry, if at all, only in competition with other barge owners." In 1872, some of the independent canal companies south of Birmingham were still working at a profit. These and other canals worked together under the statutory powers given in 1845. Where, however, canal companies depend, for through water routes, upon links in the hands of railways, they cannot quote through rates which invite traffic, owing to the heavy proportion demanded by the railway companies.³ In some cases, too, the latter charged a bar toll, that is, "a large

Absorption of
canals by rail-
ways impo-
litic.

¹ 10 & 11 Vict. c. 94.

² "In foreign countries competition by water has been jealously preserved. In Belgium the extensive system of canals has been, and remains, in the hands of the Government. In North Germany the large navigable rivers are public property, and there is a demand for new canals to compete with the railways. In France, the rivers and canals are public property, and it appears that the Government maintain the canals at an expense to the State of 8,400,000

francs, while their income from this source is only 3,500,000 francs." (Report of Joint Committee of 1872, p. 23.)

³ The Committee (p. 21) mention a through rate of 4s. 6d. charged upon iron from South Staffordshire to London. "Of this, the independent canals got 3s. for 146 miles, while the Birmingham Canal which, by means of a guarantee, is under the virtual control of the London and North Western Railway Company, took 1s. 6d. for ten miles.

and almost prohibitory toll on barges entering their canals from independent canals.”¹

Early attempts to revise railway rates.

Metropolitan water companies.

These are among the attempts indirectly made by Parliament to limit railway rates and fares. Much has also been said and done by Parliament directly, though with little success, to promote the same object. A word of tribute is here due to an early guardian of public interests, Mr. James Morrison, who, in 1836, moved in the House of Commons the following resolution:—“That in all Bills for railways, or other public works of that description, it be made a condition, with a view to the protection of the public interests, which might otherwise be seriously compromised, that the dividends be limited to a certain rate, or that power be reserved to Parliament of revising and fixing, at the end of every twenty years, the tolls chargeable on passengers and goods conveyed.”² Though Mr. Morrison’s speech was chiefly directed to railways, both his resolution and his speech embraced all private Bills proposing works of a quasi-public character. He referred particularly to the history of the Metropolitan water companies, who, “after a fierce contention among themselves, came to an agreement by which they parcelled the town into districts, and, having assigned one to each company, left it to obtain from the inhabitants the utmost that it can obtain, and to profit, without let or hindrance of any kind, by the extension of this ever-growing Metropolis.”³ In the periodical revisions for which he contended, Mr. Morrison was careful to insist that the companies should be allowed an adequate return for original outlay and risk. His proposals were so well received by the House of Commons⁴ that he was requested to bring

¹ Report of Joint Committee of 1872, p. 21. It is fair to add that these bar tolls were sanctioned by Parliament for special reasons in the original Canal Acts, and are tolls which railway companies only charge by virtue of inherited powers.

² Hansard, May 17, 1836.

³ In 1847, the Waterworks Clauses Act, and the Gasworks Clauses Act, two of the Consolidation statutes, limited the profits of all water and gas companies to ten per cent., unless the special Act otherwise provided.

⁴ During this debate, the Acts sanctioning private lighthouses were

in a Bill to carry them out. A Bill was accordingly introduced and read a first time; but it was abandoned on account of objections to the principle of interference with private enterprise, and fears lest it might hinder not only investment but advances of loan capital if the security of creditors were subject to deterioration by an enforced reduction of rates. In the same Session the Duke of Wellington moved and carried in the House of Lords a general clause to be inserted in all railway Acts, reserving to Parliament the power of dealing with railways as it might think fit during the next year.¹ Nothing, however, was done. Bill of 1836.

After the year 1836, Parliament made various attempts to control and reduce the charges of railway companies. Some Act of 1844.

referred to with justice, as showing a culpable inattention by Parliament to public interests. The lighthouses belonging to private individuals or leased for terms of years, were the Smalls, the Longships, Spurn Point, Tynemouth Castle, and the Skerries. At Harwich, Dungeness, Wintertonness, Hunstanton Cliff and Orfordness, the lighthouses were part of the land revenues of the Crown, and were leased to private individuals. All these persons were authorized to charge certain rates on ships coming within a certain distance; and, whatever revenue might accrue, there was no provision for abolishing or reducing these rates during the terms prescribed. In 1831-2, the Smalls Light, which was vested in its proprietors for ninety-nine years, yielded them a net revenue of 10,973*l.*, and when the Trinity House proposed to purchase it, the price asked for the residue of the term was 148,000*l.* The Skerries Lighthouse was built by William Trench under letters-patent granted by Queen Anne in 1714. It cost 3,000*l.*, and a son of Mr. Trench was drowned in a vessel loaded with materials which was wrecked on the

island. For some time it did not pay the expenses of maintenance. By the letters-patent the dues were to continue for sixty years. In 1730 they were made perpetual by 3 Geo. 2, c. 36; and in 1836, owing to the increase of trade, they yielded 12,500*l.* a year of net revenue. All the lighthouses, buoys, beacons and sea-marks on the English coast were vested in the Trinity House in 1836 by a public statute (6 & 7 Will. 4, c. 79).

¹ "Provided always, and be it further enacted, that nothing herein contained shall extend, or be construed to extend, to the exemption of this or any other railroad from the provisions of any general Act or general Acts for the regulation of railroads which may be passed with a view to the advantage, protection and security of the public, before the expiration of one year from the passing of this Act, if Parliament shall be sitting at the expiration of such period of one year, or if Parliament shall not then be sitting, before the end of the then next Session."—Hansard, June 14, 1836.

Provisions in special railway Acts.

of these attempts have already been indicated. For example, the Act of 1844 embodied the principle that railway rates should be revised after a fixed period of twenty-one years from the construction of any new line; but this public Act proved inoperative, for reasons before mentioned, because it assumed, as a condition of revision by the Treasury, dividends of 10 per cent., and required a State guarantee that, in the event of any deficit after revision, railway shareholders should still receive dividends of equal amount for a further period of twenty-one years. Some of the special Acts subsequently passed, especially those sanctioning amalgamation, authorised the Treasury to reduce tolls, fares, and charges, if the dividends for twenty-one years had been less than 10 per cent. But general and special provisions of this nature have been of no greater value than the clause inserted in some early Amalgamation Acts which enabled the Treasury or Board of Trade to introduce a Bill into Parliament for remedying any evil to the public interests found to arise from the amalgamation.

Proviso in all railway Acts suggested by Committee of 1844.

A provision, often referred to in proof of the power reserved by Parliament over railways, is that which, at the suggestion of the Committee of 1844, has been inserted in every railway Act passed since that period. As drafted by the Committee, this provision merely declared that the railway then sanctioned should not be exempt from any future general Act relating to railways. An important addition, not apparently contemplated by the Committee of 1844, was afterwards made, declaring that the authorized railway should also not be exempt "from any future revision and alteration, under the authority of Parliament, of the maximum rates of fares and charges" contained in the special Act.¹ A fair

¹ The Railway Clauses Act, 1845, s. 86, which authorizes railway companies to act as carriers, also authorises them "to make such reasonable charges as they may from time to time determine upon, not exceeding the tolls" specified in each private Act. It has been pointed out that

traders may, presumably, dispute charges, even though these may be within the authorised maximum, on the ground that they are not reasonable. No such question, however, seems to have been raised under the general Act.

inference from the wording of this section is, that any such revision and alteration shall be made, if at all, directly by Parliament, after inquiry before one of its Committees, and shall not be delegated to any outside tribunal. Such a question would not be one of statutory construction, or whether a company had fulfilled the intentions of the Legislature as expressed in this or that general Act; it would be eminently a question of policy, to be decided after hearing the company whose interests were affected and the creditors who had lent money on the faith of the authorized rates.

A most necessary and valuable control by the State over railway administration was embodied in the Act passed at the instance of Mr. Cardwell's Committee.¹ Thenceforth railway companies were not allowed, at their discretion, to block the communications of other companies, but were treated by the State as parts of one general system, and required to give proper facilities for interchange of traffic and through rates, both to each other and to traders, without undue preference. The Act of 1854 gave to the Court of Common Pleas a discretionary jurisdiction over railways, useful indeed, but quite out of harmony with the ordinary discharge of judicial functions.² Accordingly, this jurisdiction was transferred in 1873 to three Railway Commissioners,³ who were clothed with judicial powers for a limited period to carry out, in effect, the recommendations of Mr. Cardwell's Committee. The influence of this tribunal in improving railway administration is keenly disputed by railway administrators, who measure its utility by the small number of cases upon which it has adjudicated. Traders, however, generally believe that the tribunal, apart from actual decisions, has tended indirectly, but not ineffectually, to check or prevent abuses and fulfil the intentions of Parliament.

Railway and
Canal Traffic
Act, 1854.

Railway
Commis-
sioners.

¹ 17 & 18 Vict. c. 31.

² See Lord Campbell's Speech in House of Lords: *Hansard*, May 15, 1854.

³ 36 & 37 Vict. c. 48; and 37 & 38 Vict. c. 40, which transferred to the commissioners certain powers till then exercised by the Board of Trade.

Parliamentary inquiries into railway rates.

Defective enumeration and classification of rates.

Among the numerous inquiries into railway rates and fares, those made by the Royal Commission of 1867 and by the Joint Committee of 1872 have been, perhaps, the most important. The Royal Commission gave just prominence to a difficulty which traders still feel through an imperfect enumeration and classification of the various goods carried on railways. In the special Acts of railway companies such goods are usually divided into four or five different classes, subject to varying mileage rates. To ensure uniformity and certainty of charge, the classification should be the same on every system. In fact, it is not always identical throughout the same system. The Royal Commission give some striking instances to show the anomalies existing not only in classification but in tolls and rates.¹ One of the chief defects of the classification

¹ "Some important commodities are altogether omitted, and the class in which a particular article is placed in the Act of one company is not always the same as that in which the same article is placed in the Act of another company. In some cases Parliament has taken advantage of the amalgamation of companies to bring all their powers as to rates and tolls into the Amalgamation Act. This has been done, for instance, in the case of the Lancashire and Yorkshire Railway, and, to some extent, in the case of the London and North Western Railway; whilst in other cases the toll clauses are scattered through the numerous separate Acts originally obtained by the companies which have since been amalgamated. For instance, the Midland Railway Company has its power of levying tolls divided over three Acts. In one Act coals are classed in the lowest class, with a maximum toll of 1*d.* per ton per mile: in another Act they are classed in the second class, with a toll of 1½*d.* In one Act grain is classed in the lowest class but one,

with a toll of 1½*d.*: in the other two Acts it is placed in the next class but one, with a maximum toll of 2*d.* In the Midland Railway Acts, generally, there are four classes for merchandize and minerals; in the Lancashire and Yorkshire there would appear to be eight; in the North Eastern five; and in the London and South Western three. The London and North Western Company appear to derive their powers from five Acts, in some of which the articles are placed in eight classes; in others, in three or four classes. The Great Eastern Railway Company have five Acts, in some of which the articles are placed in five classes; in others, in four classes. The Great Northern Railway would appear to have their powers for levying tolls and rates contained in nine separate Acts, in some of which the articles are placed in five classes; in others, in four classes. The Great Western would appear to have thirteen Acts with toll and rate clauses. In one Act the maximum toll for rod and pig iron and iron ore is ½*d.* per ton per

attempted in the Acts of railway companies is that articles are inadequately enumerated. As examples of this imperfect enumeration, the Commissioners mention one Act which specifies 22 articles; another, 98; another, 160; "the Acts adding at the end of the highest class general words to include all other articles and matters not enumerated in the previous classes."¹ Goods not enumerated, therefore, come under the highest class, and railway companies can put them either in that class or in any class below it.

When goods are carried by through rates over several railways on which the classification differs, these rates could not be properly apportioned among the carrying companies unless they agreed to abide by a common standard. In adjusting their accounts in the Clearing House, therefore, railway companies have always adopted, of necessity, a uniform classification, distinct from that in their special Acts, but carefully framed, according to their view, so as to be within the statutory maximum. In 1847 this classification contained only 326 articles; in 1867 it had increased to between 1,300 and 1,400 articles, divided into seven classes,—a mineral class, a special class, and five ordinary classes. In 1881, the number of articles was 4,088.² The Royal Commission of 1867 were of opinion

Clearing
House classi-
fication.

mile: in another, those articles are placed in another class with a toll of $1\frac{1}{2}d$. In one Act grain is placed in the lowest class but one, with a maximum toll of $1d$; in another Act it is placed in a class above, with a maximum toll of $2d$; and in a third Act the maximum toll is $2\frac{3}{4}d$. In one Act the articles are divided into eight or nine classes; in others into four classes."—Report, pp. 30–1.

¹ *Ib.* p. 31.

² According to the regulations of the Clearing House, "the rates charged for through goods are fixed with reference to a uniform classifi-

cation, sanctioned by the Clearing House Committee, and approved and adopted by all the companies parties to the clearing system." About 160 articles are added to this general classification every year. Proposals for alterations in or additions to it must be brought under the notice of the Goods Conference which meets once a year, specially to consider classification subjects. If a statutory classification were enforced, provision must be made for a similar periodical revision, so as to adapt it to changes in the course of trade.

that the Clearing House classification should be made the basis of a general enumeration and classification, which should be set forth at length in a general Act, to be incorporated with each special Act by reference, so that it would only then be necessary to enact the maximum tolls or charges for each class.¹ This remedy would be effectual in the case of new companies, but would be of little practical use unless means were at the same time taken to enforce it upon existing companies, who must then obtain Parliamentary sanction to a re-arrangement of their maximum rates in conformity with the new classification.

Regulation of
Railways
Acts, 1868 and
1873.

Parliament did not adopt the suggestion made in 1867 as to classification, but passed in the following year an Act which required railway companies to exhibit at each station a list of all the passenger fares from that station to every place for which tickets are there issued, and also required companies, within one week after application by any person who has paid for carriage on goods, to give him an account distinguishing between carrying and terminal charges.² In 1872 the Joint Committee again called attention to the loose and imperfect classification of rates in special Acts, which enabled railway companies "arbitrarily to place in one class or another, or to remove from class to class, the many unenumerated goods."³ The Committee, therefore, again suggested that the companies should be compelled to adopt the Clearing House classification for general traffic and adapt their statutory rates to it, subject to periodical revision.

Publication of
rates.

This recommendation was once more neglected; but owing to the views expressed by the Joint Committee, another Regulation of Railways Act was passed in 1873, and railway companies were thereby required to supply at each station, for the information of traders and freighters, rate books showing the charges for goods.⁴ These books, however, do not appear

¹ Report, p. 67.

² 31 & 32 Vict. c. 119, ss. 15, 17.

³ Report, p. 37.

⁴ 36 & 37 Vict. c. 48, s. 14. This is the statute constituting the Railway Commissioners, and transferring to

to be of much assistance in testing rates; and numerous exceptions and special rates add to the traders' difficulties in ascertaining them.¹

Classification in 1882 still remained imperfect, varying, as in 1867, not only in the special Acts of different companies, but in Acts of the same company. "Almost every railway company levies rates under several Acts applicable to different portions of its system, and in some cases reference must be had to more than fifty Acts to determine the various rates the company is authorized to charge."² These anomalies led in 1882 to a renewed recommendation "that one uniform classification of goods be adopted over the whole railway system."³

Classification
in 1882-5.

This recommendation came from a Committee of twenty-seven members appointed by the House of Commons in 1881 to inquire into the charges of railway companies, and

Commons'
Committee of
1881-2 on
Railway
Charges.

them the jurisdiction vested in the Court of Common Pleas by the Railway and Canal Traffic Act, 1854. Sect. 12 gives the Commissioners large powers "to decide that any proposed through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of such through rate than the maximum rate such company is entitled to charge, and to allow and apportion such through rate accordingly."

¹ Committee on Railway Rates and Fares, 1881-2; Report, p. 7. The rate books show all the rates charged, but what has been desired is that the powers of each company should be consolidated, with a new classification, enumerating as far as possible all articles carried, so that a trader by looking at the Act authorising the tolls, and to the classification, may ascertain for himself whether the rates in the rate books are within the company's maximum.

² *Ib.* In fairness to railway managers their views should be quoted

(p. 7):—"The companies maintain that so long as competition between different systems and districts exists, rates for goods cannot be fixed upon any simple or uniform basis; and that any practical inconvenience arising from complication or uncertainty is avoided by the custom which prevails among traders of applying by letter to the railway companies for any information required as to rates. A clause requiring each company under penalties to give detailed information as to all rates which it charges has been inserted in every railway bill promoted in Parliament during the present Session (1882)."

³ *Ib.* p. 16. In his evidence (Part I., p. 589), Mr. Grierson, General Manager of the Great Western Railway, contends that a re-classification by Parliament would not be equitable without taking into consideration the powers of each company. It should be noted here, that in Ireland the railway classification differs from that adopted in England.

Tests of satisfactory railway administration.

the working of the Railway Commission of 1873. It cannot be said that in the constitution of this Committee complaining traders were insufficiently represented, or that the report was insufficiently considered. There were 113 divisions before the draft report was finally settled.¹ Most of the traders' complaints laid before this Committee were the same, in substance, as those made in the inquiries of 1865-7 and 1872. One of the able railway managers who gave evidence² said, with truth, that railway work must be judged by various standards, not exclusively by one; that in comparing English with foreign systems, for example, you must take into account, among other elements, not only cheapness of transport, but frequency of communication between given points, shortness of time occupied in transit, convenience and comfort of passengers, and freedom of passengers and goods from accident relatively to amount of traffic.³ A prolonged investigation like that of 1881-2, though limited in terms chiefly to the question of rates, would certainly have shown traces of any well-founded complaints upon other features of railway management. The record, however, is singularly clear on all points save one. Some specific instances of over-charge appear to have been established; but "on the whole of the evidence" the Committee "acquit the railway companies of any grave dereliction of their duty to the public." No witnesses appeared to complain of undue preferences to individuals, "such as were more or less frequent during the

¹ Minutes of Proceedings, pp. 17-87. The draft report of the Chairman (Mr. Ashley, Under Secretary of the Board of Trade), was set aside for one prepared by Mr. Barclay, though many paragraphs of the former were afterwards adopted.

² One result of railway development has been to place at the service of our great railway companies, for the conduct of their vast and complicated business, some of the keenest

intellects in England; men who, under the strain of perpetual examination and cross examination in the committee rooms at Westminster, have become not only witnesses intimately acquainted with the subject on which they speak, but practised advocates, often more than a match on their own ground for the most skillful leaders of the Parliamentary bar.

³ *Ib.*; Minutes of Evidence (Mr. J. S. Forbes), p. 163.

years immediately preceding the Act of 1854." The Committee found that "the rates for merchandize on the railways of the United Kingdom are, in the main, considerably below the maximum authorized by Parliament;" and although for long distances these are higher than the charges on many Continental lines, excess in cost is largely balanced by much greater rapidity of service on our home railways.¹ As to passenger traffic, the complaints submitted were "rather local than general, and not of an important character."²

The evidence taken before this Committee, and fairly reflected in their report, shows how elaborate and at the same time how delicate a piece of mechanism is the working of a great railway, especially in the adjustment of rates, affecting every variety of goods, carried under the most varied and constantly varying conditions of trade and railway policy.³ It was stated by the Joint Committee of 1872 that the goods' rates of each of the great companies were then numbered by millions, a number constantly increasing with the increase of through rates and through booking.⁴ In 1882, the Midland Company alone had about thirty million different rates; the Great Western, twenty million; the London and North Western, between fifteen and sixteen million.

Multiplicity
of goods'
rates.

¹ Report, p. 15.

² *Ib.* p. 13.

³ The difficulties of adjusting rates for goods are fairly set forth by the Joint Committee of 1872 (Report, p. 38):—"There are distinctions of all sorts. There are the rates to each station on the company's own line; there are rates to every station on every other line to which the company books; and those rates will vary according to the arrangements made by the company with every other company over whose lines the goods are carried. There are the seven or eight classes of goods for which the company charge different rates. There are the equal mileage

charges, where the principle of equal mileage is adopted, and the special rates charged in the more numerous cases where sea or other competition induces the company to charge special rates. And there are the numerous cases, still less reducible to principles or rules capable of general statement, where the companies, in consideration of large and constant custom, or for other reasons, makes specially favourable bargains with particular traders. And in addition to all, there are the charges which are almost entirely in the discretion of the railway companies."

⁴ Report, p. 38.

When, in a single branch of railway administration, there are such numberless opportunities of complaint and attack, such numberless instances in which overcharges or anomalous charges may exist by inadvertence rather than by intention, the wonder is that complaints by traders are not infinitely more numerous and more serious than those which came to light in 1881-2.

Equal mileage rates.

A common theory, that railway companies should charge equal mileage rates, that is, rates for each class of goods and passengers proportioned exactly to the number of miles run, was demolished by the Royal Commissioners in 1867, as well as by the Joint Committee five years subsequently.¹ It was not revived in 1881-2, but equality of charge in other forms was pressed upon the Committee without convincing them that such equality would always be for the public good. The chief complainants were home producers, prejudiced by differential rates in favour of foreign imported goods. In the opinion of the Committee, "many of these

¹ It may be useful to record here the reasons given by the Committee of 1872 (Report, p. 32) against equal mileage:—"1. It would prevent railway companies from lowering their fares and rates, so as to compete with traffic by sea, by canal, or by a shorter or otherwise cheaper railway, and would thus deprive the public of the benefit of competition, and the company of a legitimate source of profit. 2. It would prevent railway companies from making perfectly fair arrangements for carrying at a lower rate than usual goods brought in larger and constant quantities, or for carrying for long distances at a lower rate than for short distances. 3. It would compel a company to carry for the same rate over a line which has been very expensive in construction, or which, from gradients or otherwise, is very

expensive in working, at the same rate at which it carries over less expensive lines. In short, to impose equal mileage upon the companies would be to deprive the public of the benefit of much of the competition which now exists, or has existed; to raise the charges on the public in many cases where the companies now find it to their interest to lower them; and to perpetuate monopolies in carriage, trade and manufacture in favour of those routes and places which are nearest or least expensive, where the varying charges of the companies now create competition. And it will be found that the supporters of equal mileage, when pressed, often really mean not that the rates they pay themselves are too high but that the rates which others pay are too low."

differential charges afford substantial grounds of complaint," though whether they constitute undue preferences are questions for the proper tribunal, considering each case on its merits. A remedy suggested was that rates should be made to bear "some fixed proportion to the cost of the service performed;" in other words, as the Committee point out, "that the companies should not be allowed to make a higher profit on one part of their traffic than on another." Any such standard would be difficult, if not impossible, in practice; but assuming it to be practicable, the public would hardly be the gainers:—

Rates proportioned to cost of service:

"The result would be, that traffic which is now carried at a low rate in competition with a sea route would be driven from the railway to the competing sea route; while the railway, if it is to make as much aggregate profit as before, must charge a higher rate than it now charges on the traffic which remains to it.¹

Their effect upon traffic.

¹ This statement by the Committee has since received an apt illustration. One of the complaints made to them by traders was, that foreign hops were conveyed from Boulogne *via* Folkestone to London, at 17s. 6d. per ton, while the charge for hops from Ashford, on the same line of railway, to London, including cartage and other services, was 35s. per ton (Report, p. 6). Respecting this grievance, Sir Edward Watkin has since stated (Meeting of South Eastern Railway Company, July 24, 1884):—"On inquiry, he found that the South Eastern last year carried 116,000 kilogrammes of French hops, which were press-packed and therefore of smaller bulk as well as of smaller value than English hops; and for this service the company received 151l. He at once said to their general manager, 'Put an end to the rate,' and the result was that these hops had been brought to

London, up the Thames, at 12s. 6d. per ton." Other anomalies of the same kind, urged by traders before the Committee, probably admit of similar explanations. For example, "the beef of American cattle slaughtered at the wharf in Glasgow is carried to London for 45s. per ton, while the rate for the meat of home cattle conveyed under similar conditions is 77s. per ton. Bale goods from Manchester for export are conveyed to London at the rate of 25s. per ton, but 40s. is charged for packed goods to warehouses in London, and so in many other cases. The rate for cotton to Manchester from Barrow-in-Furness, a distance of 87 miles, is 9s. per ton; and the same rate is charged from Fleetwood, 50 miles, and also from Liverpool, a distance of only 31 miles."—Report of Committee on Railways (Rates and Fares), 1881-2, p. 6.

"If Parliament were to say that the North Eastern and Great Northern Companies shall make no greater profit on cattle or on fish brought from Newcastle, or from Hull, or Grimsby, to London, than they do on cattle or fish brought from Scotland or from abroad over the same portions of their respective lines, the effect would be either to send the Scotch and foreign goods by sea to London, or to prevent them going to London. In either case the traffic of cattle and fish to the London markets would be restricted; the price would be raised; and, though the price would be raised, the English producer would not get the benefit of it, for the railway companies would be able to raise their rates on English cattle and fish in order to recoup themselves for the loss of their Scotch and foreign traffic. Or, again, if the Great Eastern were not allowed to have a cheap long distance rate to London, the trade of Norfolk and Suffolk in agricultural produce would almost disappear as regards cattle.

"Therefore when it is said that low rates always increase traffic, and that the companies will adopt universally the lowest rates they are now charging to anyone, the answer is, that they are likely to understand their interest better than the Legislature; that if you force them into equal rates they will no longer have any inducement, or indeed be able, to make the experiment of low rates; whereas, under the present system, competition and self-interest oblige them to make these experiments.

The case of
inland towns
v. seaports.

"Again, taking the case of the inland towns which complain of the lower mileage rates granted between towns which have better access to the sea, it is obvious that the railway companies are really only preserving to the latter the advantages which nature has given them, and that to prevent them giving the lower rates would really benefit no one except the owners of steamers. Places less accessible by natural avenues like navigable waters or the sea may be less fortunate; but it is scarcely just or profitable—it must be unprofitable to some interest—to undertake by arbitrary laws to supply the advantages denied by their situation."¹

Terminals.

Intimately connected with the general question of railway rates are the charges known as terminals. These charges owe their existence partly to statute, partly to custom, and to general acquiescence by traders. Equitable in principle, though sometimes doubtful in law, they are imposed in

¹ Report, pp. 10, 11.

return for necessary services not included in mere conveyance, though in one sense incidental to conveyance.

In the first Railway Acts the toll clauses were borrowed from the Canal Acts, and are thus full of defects in the classification of goods. They also contain no reference to terminals, for the early canal and tramway companies were toll-takers only, and provided no terminal accommodation.¹ Instances have been already given of Railway Acts containing no reference to stations, or providing for the construction of such accommodation by landowners.² Here, again, the Canal Acts were the models upon which this early railway legislation was based.³

Station accommodation in early Railway Acts.

The Railways Clauses Act of 1845 did not attempt to introduce uniformity or system in railway charges by regulating the classification of passengers, cattle or goods, or

¹ Thus, upon the original London and Birmingham line the carrying business was conducted by agents, such as Messrs. Pickford, who performed the service of loading and unloading, cartage and delivery, the railway company simply receiving tolls. In 1847, after the passing of the London and North Western Amalgamation Act, 1846, the company themselves became carriers, and the Act just mentioned (sect. 62) authorized maximum rates "for the use of the railway and waggons or trucks and locomotive power, except a reasonable sum for loading, covering and unloading of goods, and for delivery and collection, and any other services incidental to the business or duty of a carrier."—*Ib.* Part I. p. 681; evidence of Mr. Findlay, General Manager of London and North Western Railway Company, who there describes the traffic between London and Birmingham by carrier and canal before the opening of the railway, with the rates then charged,

and the time occupied in transit.

² *Ante*, p. 80.

³ See Worcester and Birmingham Canal Act, 1791, which (sect. 65) authorizes lords of manors along the line of canal to construct wharves, quays, warehouses, &c., making a charge for the use of them, and leaving the company to provide the canal only. Similar clauses may be found in an Act of 1802, for making the Monmouthshire Tramroad, now a railway, and part of the Great Western system. If the lords of the manor did not provide this terminal accommodation, the canal or tramroad company could do so, charging for it accordingly.—Committee on Railway Rates, Part I. pp. 568–9; evidence of Mr. Grierson, who points out that even now there is no statutory obligation upon railway companies to provide station accommodation, unless as the result of specific arrangements embodied in their Acts at the instance of opposing landowners.

Gradual recognition of terminals.

by specifying the services to be rendered by the railway companies as carriers, or by fixing tolls or fares. Any general scale of rates would, indeed, have been inequitable, for rates must be governed to some extent by the cost of a railway,¹ and, in the case of exceptionally heavy gradients, by the exceptional expense of working. After, as well as before the year 1845, therefore, railway tolls and charges, as we have seen, continued to be fixed by each private Act constituting a company. These Acts enabled the company to charge certain mileage rates for passengers and animals, and tonnage rates per mile on goods, "for the use of the railway," with an additional charge if carriages were provided by the company, and a further charge for locomotive power.² A maximum rate, covering these three items of charge for conveyance, was also introduced in 1845,³ and continued to be fixed in each private Act.⁴ This maximum was usually somewhat less in amount than the aggregate of the three separate tolls, probably because it was supposed that if the company worked the traffic exclusively, they could afford to do so on easier terms than if carriages or locomotive power were supplied by traders.⁵

"Station"
and "hand-

When railway companies became not mere owners of the

¹ In the Railway Clearing House, special allowances are made, above the ordinary mileage rates, for specially costly works. For example, in respect of the High Level bridge at Newcastle, three miles are allowed instead of one mile, the actual length of the bridge.—Joint Committee of 1872; Evidence of Mr. Dawson, Secretary to the Clearing House, p. 546.

² See the toll clauses (sects. 304–15) of Lancaster and Carlisle Railway Act, 1844 (7 Vict. c. 37). Sect. 309 authorized the company "to charge any sum which they may think fit"

for passengers conveyed by first-class trains travelling at a speed, including stoppages, of not less than twenty-five miles an hour.

³ The first Act containing it appears to have been the London and Birmingham Railway Act, 1845.

⁴ A totally exceptional case is that of the South Eastern Railway, on a great part of which no statutory maximum of tolls has been fixed.—Committee on Railway Rates; Min. of Ev. Part I. p. 846.

⁵ Committee on Railway Rates, Report, p. 4.

railway, but sole workers of the traffic upon it, they spent large sums in providing stations, sidings, warehouses, sheds, cranes, and other fixed plant, which had in many cases been previously provided or leased not by the landowners but by private firms.¹ For this accommodation the charges may be conveniently designated as "station terminals." Railway companies also supplied labour and appliances for loading, unloading, and covering traffic, services which varied in respect of different traffic, and the rates for which may be distinguished from the former class as "handling terminals."² For both classes of service railway companies claim to be paid by virtue of provisions in most Railway Acts, which, however, are far from clear or specific. On the other hand, some traders have at various times contended that the maximum charge in the special Acts, the station to station rate, should, in the words of many of those Acts, cover all services "incidental to conveyance," including the use of a station and sidings, loading and unloading (unless expressly excepted), and like terminal services. In the view of the companies, conveyance only commences when the train begins to move; the services mentioned, therefore, are not incidental to conveyance, but are extra services for which extra tolls may be properly demanded.³

On these questions the opinion of Parliament seems to have undergone important changes. The Royal Commissioners of 1867 suggest that the maximum mileage rate may originally have been intended to cover all services of loading and un-

ling" terminals.

Varying provisions in special Acts.

¹ Messrs. Pickford built the first warehouse in London to accommodate the goods traffic of the London and Birmingham Railway; it was afterwards bought by the London and North Western Railway Company. Up to the year 1881, this company had spent on goods stations, and on appliances and conveniences connected therewith, the sum of 2,300,000*l.* in London alone; in Liverpool, for the same object,

1,913,000*l.* had been laid out, a sum twice as much as was required originally to construct the Manchester and Liverpool Railway.—Evidence of Mr. Findlay, *ib.*, Part I., p. 681.

² Besides these classes, a third has been proposed, namely, cartage terminals, which include collection and delivery.

³ Committee on Railway Rates, Report, p. 4.

loading.¹ Then railway companies complained that, though on long distances they might recoup themselves by their mileage rate for the cost of terminal services, they would be losers if upon short distances they were not allowed to make an additional charge for these services. Recognizing the justice of this complaint, Parliament sanctioned a "short distance clause" in the following form :—"For articles and persons conveyed a less distance than six miles the company may demand, in addition to the tolls and charges, a reasonable charge for the expense of stopping, loading, and unloading."² Subsequent legislation modified this enactment. The following short distance clause was then sometimes inserted in special Acts :—"For articles or persons conveyed on the railway for a less distance than six miles, the company may demand tolls as for six miles, in addition to a reasonable charge for the expense of stopping, loading and unloading."³ Parliament also frequently recognized a separate charge for terminals for all distances. Sometimes the services were specified for which this charge might be made, as for "loading and unloading ;" or for "loading, unloading, and covering, and for delivery and collection of goods and other services incidental to the business of a carrier ;" and for "warehousing and wharfage and any other extraordinary services which may be reasonably and properly performed by the company."⁴ In all these cases the charge sanctioned was to be "a reasonable charge," and the North

Short distance clauses.

Handling terminals specified.

Arbitration as to terminals.

¹ Report, p. 31. In the view of the railway companies this suggestion is erroneous. The Great Western Act of 1835, for example, specifically states the contrary.

² According to the Royal Commissioners short distance clauses were first sanctioned "about the year 1841," for the reason given in the text. But in the Great Western Act of 1835, which contemplated that the company should be toll-takers only, s. 72 authorized them to charge for

a less distance than six miles as for six miles. It was not till 1837 that the company were authorized to become carriers.

³ Lancaster and Carlisle Railway Act, 1844, s. 205.

⁴ See pp. 31-2 of Report of Royal Commission, where examples of these special provisions are collected. See also Glasgow and South Western Railway Consolidation Act, 1855, ss. 105, 110.

Staffordshire Railway Act, 1864, contains a provision for settling terminal charges by arbitration, failing agreement.¹

In 1882, the companies appear to have been unable to furnish evidence of any specific authority to charge for the use of stations, except in the Lancaster and Carlisle Act, 1844,² and the North Staffordshire Act, 1880. As to traffic carried for long distances, the companies' charges do not admit of question, inasmuch as, including terminals, they are "almost invariably below" the authorized maximum of mileage rates. But for short distances and for goods in the higher classes, the aggregate charge "would in many cases be beyond the statutory maximum" of the companies, "if they are not entitled to add station terminals."³

Doubtful
legality of
station
terminals.

As it is thus doubtful whether there is legal authority for, at least, one description of terminals, some attempts have been made, on the one hand, in the interest of the companies, to make these charges valid; and, on the other hand, in the interest of trade, to put an end to them, or place them under reasonable restrictions. In and after the year 1856, the Board of Trade, in their annual reports, objected to the provisions then commonly inserted in railway bills authorizing handling terminals, and alleged that the maximum tolls were intended to include terminal services. Acting on this objection Private Bill Committees frequently struck out clauses which recognized terminal services and allowed reasonable remuneration in respect of them.⁴

Attempted
legislation.

¹ 27 & 28 Vict. c. 308, s. 19.

² This Act enables the Company (s. 313) "to charge for locomotive or steam power and carriages, and for loading and unloading the said goods, wares, merchandise, articles, matters or things, and for the use of the stations or other accommodation, or services provided or performed by them, such sum or sums, and that either per ton or per mile, or by bulk, measure, number, or admeasurement, or by fixed charges, as they shall think expedient."

³ Committee on Railway Rates, 1882, Report, p. 4.

⁴ Representing the Board of Trade in 1881, Sir Thomas Farrar stated that he should not now object to railway bills authorizing terminal charges (*Ib.* Part I., p. 846). If, he added, railway companies were deprived of their terminals, they might say, "We will no longer do the service we now do; we will sell our goods' yards, and allow the carriers to do all the business we now do in loading and unloading, sorting and

A change of such gravity in private bill legislation naturally led to remonstrances from the railway companies, and was discussed, in the year 1861, at a conference between their representatives and the Chairmen of Committees of the two Houses.¹

Model clause
fixing rates.

The result of this conference was that a model clause was agreed to at a meeting of Chairmen of Railway Committees in the House of Commons, in June, 1861. This clause authorized each company, acting as carriers, to "make a reasonable terminal charge for the accommodation afforded and service rendered by them in respect of any goods or minerals, other than the actual conveyance thereof, along the railway." The charge was in no case to exceed the rate of 2s. a ton for goods, and 9d. for minerals, at each terminal station, unless, by the desire or default of the consignor or consignee, the goods or minerals remained on the company's premises for twenty-four hours, in which case the company might charge an additional reasonable sum for occupation of premises and for services performed by them owing to such delay. When the company performed "any service with respect to traffic outside their premises," they might also charge "a further reasonable sum for such service." Small parcels were to be exempt from terminal charges. Under this provision coal would have been liable to terminals of 1s. 6d. per ton, and the coal-owners appear to have feared that such charges, if once authorized, might always be

all the rest of the business." In his view, the Act of 1854, requiring that companies "shall according to their respective powers afford all reasonable facilities for receiving, forwarding and delivering traffic" (s. 2), was meant to prevent unreasonable delays, and did not refer to the provision of structural works (pp. 847-8).

¹ In a memorandum prepared by the late Mr. Coates, and submitted

at this conference, terminals were roughly estimated as constituting one-fifth of the whole average revenue of railway companies from goods, and as representing an expenditure of somewhat similar amount. A narrative of the conference, and of the events which followed it, is given by Mr. Grierson in his interesting sketch of the statutory rise of railway terminals (ib. pp. 581-3).

continued at this maximum. They, therefore, took alarm; and owing to their opposition the clause was withdrawn.¹

In 1864 the public Act for facilitating the construction of small railways recognized the principle of terminals by authorizing any companies who took advantage of this statute to make, in addition to rates for conveyance, "a reasonable charge for the loading, covering and unloading of goods at any station on the railway, being a terminal station, in respect of such goods, and for delivery and collection, and any other services incidental to the duty or business of a carrier, where such services, or any of them, are or is performed by the company. A station shall not be considered a terminal station in respect of any goods unless they are received there direct from the consignor, or are ordered to be delivered there to the consignee."² In the following Session Mr. Milner Gibson, President of the Board of Trade, adopted this provision in a measure which embodied, for general application to railways, certain clauses then commonly inserted in various special Acts. On public grounds, however, the Bill was strongly opposed, and was therefore withdrawn. It was re-introduced in 1866, but did not become law.³

Railways
Construction
Facilities Act,
1864.

Railways
Clauses Bill,
1865-6.

The principle of terminals seems to be conceded in 1867 by the Royal Commission, who recommended that railway companies should be required to notify publicly at each

Results of
Parliamentary
inquiries.

¹ Report of Royal Commission, 1867, p. 22. Upon the application of the Committee of Chairmen, the representatives of the railway companies consented to this withdrawal, on the understanding that the model clause was not further proceeded with, and that railway companies should charge for terminals as before. The model clause was inserted in two Bills of the Session of 1861: the Downpatrick and Newry Junction Bill, which was passed without alteration, and the Newcastle-upon-Tyne, Derwent, &c.

Bill. To the clause in the latter Bill strong objection was taken, and the provision formerly in use was therefore substituted, authorizing a "reasonable" charge for terminal services, without specifying the amount.

² 27 & 28 Vict. c. 121; Regulation 8 in Schedule.

³ Acting upon the North Staffordshire precedent, Mr. Horsfall, in 1865, proposed a clause in this abortive Bill, subjecting all terminal charges to arbitration.

station, in addition to their mileage rates, "the charge they make for all terminal services, and that at the request of a freighter they should be required to separate these charges from the mileage rates in their accounts with him."¹ The Joint Committee of 1872 came to the same conclusion,² though they admit that the course they suggest has its difficulties. We have seen that the only limitation upon terminals when authorized by statute, is that they shall be "reasonable." If Parliament could have foreseen that railway companies would monopolise the business of carriers on their lines, a maximum limit would probably have been placed upon terminals as upon mileage rates. Whether any such maximum should now be imposed raises a different question. The Joint Committee were of opinion that even the ordinary toll clauses in special railway Acts, with their maximum limits, "afford little real protection to the public, since they are always fixed so high that it is, or becomes sooner or later, the interest of the companies to carry at lower rates." The same thing, they add, is true of terminal charges. In the constant changes to which trade is subject, "any legal maximum which might now be fixed would probably be above the charges now actually made, certainly far above those which will hereafter be made." The attempts in 1861 to fix a maximum for terminals "broke down because the only maximum that could be agreed upon was one so much beyond the charge then actually made for coal that the coalowners feared it would lead to a rise in that charge."³ The Committee therefore conclude that there would be much difficulty and little, if any, gain to the public in determining a maximum scale of terminal charges.⁴

Policy of
maximum
rates on
terminals.

Publication of
terminals.

Witnesses examined in 1872 on behalf of the railway

¹ Report, p. 69.

² Report, p. 39.

³ In the case already quoted (*ante*, p. 175, note), the traders preferred to abide by the existing indefinite autho-

rity imposing "reasonable" charges rather than have maximum terminal rates specified in the Act.

⁴ Report, pp. 34, 51.

companies alleged that it would be impossible without great injustice, both to the public and the companies, to frame any rules or scale of charges applicable to all terminals for all classes of goods, owing to the varied character of the services in respect of which charges are paid.¹ As regards the public, the Joint Committee admit that there may be some truth in this statement, though they think that the public "would probably gain more by certainty than they would lose by inequality." But the position of the companies on this point was considerably weakened by a provision in an Act of 1868,² carrying out one of the suggestions made by the Royal Commission in 1867. Under this provision, a trader who has paid for the carriage of goods can call upon the railway company for an account showing how much he is charged for conveyance, including the use of the railway carriages and locomotive power, and how much "for loading and unloading, covering, collection, delivery, and for other expenses, but without particularizing the several items of which the last-mentioned portion of the charge may consist."

Regulation of
Railways Act,
1868.

As railway companies thus became bound by statute to distinguish between mileage and terminal charges after payment, there was obviously no valid reason why the same particulars should not be furnished for the information of traders before payment. Moreover, though it is no doubt a work requiring greater nicety and precision to fix the terminals paid by freighters, the companies have framed a rough and ready scale for use as between themselves in the Clearing House.³ Parliament did not, in its legislation of 1873, carry out the recommendation made for the publication of terminals,⁴ but gave the Railway Commissioners, then

Clearing
House scale of
terminals.

Regulation of
Railways Act,
1873.

¹ Ev. of Sir James Allport, 422.

² 31 & 32 Vict. c. 119, s. 17.

³ It is fair to remember that the terminals agreed between railway companies, in order to clear the receipts on traffic carried, have not been fixed with a view to cover actual cost, but as being on the whole

a give-and-take sum which fairly provides for the interests of each company, inasmuch as a terminal company in one transaction is an intermediate company in other transactions.

⁴ In 1872 the Clearing House allowance for terminals was 4s. for

Jurisdiction of
Railway
Commission.

created, "power to hear and determine any question or dispute which may arise with respect to the terminal charges of any railway company, where such charges have not been fixed by any Act of Parliament, and to decide what is a reasonable sum to be paid to any company for loading and unloading, covering, collection, and other services of a like nature."¹ But this provision is only operative in the event of disputes; "it merely governs the individual case, and then only by an expensive legal proceeding. It has not removed the complaints that terminals are excessive, and that, by mixing up undetermined terminals with mileage rates, all means of comparing the actual charges with the statutory maximum are taken away from the public."²

Commons'
Committee of
1881-2 on
Railway
Rates.

After carefully reviewing the whole position, the Committee of 1882 came to the conclusion that the right of railway companies to charge for station terminals should be recognized by Parliament. In return, the companies should be required, by a general Act, to notify clearly at each station all terminal charges, so that the reasonableness of these charges might be challenged before the Railway Commissioners; and, in giving their decision, the Commissioners should have power to take into account the maximum rates of the company.

General view
of railway
legislation.

In concluding this attempt to trace, in some of its main features, the statutory growth of our railway system, a few general considerations are naturally suggested. Within a period of fifty years, Parliament has been called upon to assist private enterprise in carrying out works which, for cost

carted traffic, 1s. 6d. for non-carted traffic, and 9d. for mineral traffic. In London the allowance for carted traffic was 8s. 6d. There were some exceptional rates, settled by agreement between the companies concerned: but on the above basis the Clearing House every month then settled the traffic between about

130,000 pairs of stations, three companies being on an average concerned in every settlement, though only two received a terminal.—Joint Committee; *Ev. of Mr. Dawson*, 547.

¹ 36 & 37 Vict. c. 48, s. 15.

² Committee on Railway Rates, 1882; Report, p. 5.

and magnitude, and also, happily, for the advantages they have conferred on the whole community, are unrivalled in history. We must judge neither Parliament nor projectors by the light of our present knowledge of what they might have done to promote public or private interests. Railway construction, like all other industrial undertakings in England, was left in private hands. Among other results, advantageous or otherwise, following from adherence to this common rule, Parliament was unable to prescribe the course which railways should take, or the districts they should serve, and was compelled to choose the best out of such projects as came before it. At first it shared with the rest of the world only a dim, faint perception of the new forces it was helping to call forth, and of the practical monopoly in transit it was creating. Then, when better knowledge came, it had to reconcile the just claims of shareholders, by no means over-remunerated, with private and public interests in many forms, all apparently threatened, and all entitled to protection from a body representing the common good.

With what zeal and how indefatigably Parliament has laboured to secure these objects, both by inquiry and by special and general legislation, the foregoing pages show in part, but only in very small part. The text-books on railway law set forth about eighty general statutes relating to railways, passed since 1837. Not fewer than four thousand private railway Acts have been sanctioned since 1830,¹ many of them after prolonged investigation. Now that time has abated much of the early suspicion and fear caused by railway amalgamations, and the growing power of railway companies, we can consider more calmly how far, as the result of this enormous labour, Parliament has succeeded in securing public interests, without unduly restricting private enterprise.

The work of
Parliament.

¹ The Joint Committee of 1872 (Report, p. 39) then estimated the number of special railway acts at

more than 3,000. They have since increased by about a thousand,

Favourable
tenor of
Report by
Committee of
1882.

From this point of view the highest value must be attached to the general verdict given in 1882, upon a question so vital as that of rates and fares. On all grounds it is satisfactory to find a Committee, so constituted, able to speak with general favour of railway services and management. Private Bill Committees, after all, cannot have gone far wrong in what they have done to build up such a system, even though they may have disregarded theories, given scant attention to departmental reports,¹ and decided only upon the facts before them. And if no graver charges than those of 1881—2 can be brought against railway administration, an impartial conclusion upon the evidence must be that, taking a broad and only moderately generous view of their necessities and difficulties, and considering the complex conditions of the vast traffic on their lines,² English railway directors succeed in reconciling, with wonderfully little friction, the interests of their shareholders and those of the public.

Necessity of
continued
control over
railways.

This general conclusion does not exclude the necessity of a continued strict control by some executive department

¹ In his evidence before the Committee of 1881—2 (Part I. p. 846), Sir Thomas Farrer confirms the statements more than once made in these pages, that reports by the Board of Trade as to the general policy of railway Bills were "treated as waste paper" by Committees. The Reports of Lord Dalhousie's Railway Department, though "very able, were thrown over immediately they got before Parliament." Under these circumstances, "it was found as idle as disheartening" to continue the reports. Then Sir Thomas Farrer continues:—"I am not very well able to judge of the value of reports of the Board of Trade (upon the rates in railway Bills), but I do not think they are of

much value, for this reason—that the merits of almost all those charges depend upon local circumstances. The Board of Trade has no power of taking evidence; they have no power of calling the parties before them and examining them; and consequently their reports are very little more than a statement that such and such an increased charge is being proposed." This frank admission fully confirms the view so frequently taken of these departmental reports by Private Bill Committees.

² It was stated before the Committee of 1881—2 that there were about a hundred million transactions during the year in the transport of railway traffic.

which shall supervise the working of railways, as the Board of Trade now does, with a view to public safety; and also by a tribunal so constituted as to command for its decisions the confidence which suitors feel in decisions by Judges of the High Court.¹ Such a tribunal should possess ample powers to prevent undue preference and secure reasonable accommodation for traffic, just and equal treatment for traders, and easy redress for over-charges upon goods or passengers.² Above all, it would be in a high degree impolitic for Parliament to relax its control over railways, or to delegate this control to any minor authority. The four thousand special Railway Acts already mentioned, constitute a monument of patient labour, requited by signal advantages gained for the public. There have thus been created colossal interests, repre-

By Board of Trade:

By tribunal with wide jurisdiction:

And by Parliament.

¹ While recommending that the Railway Commission should be made permanent and a Court of Record, and its powers greatly extended, the Committee of 1882 also very properly ask that an appeal from its judgments should be granted as of right.

² The Joint Committee of 1872 insist strongly that, with this view, railway companies should be required to give full information as to their rates, distinguishing between mileage and terminals. In the absence of such information, easily accessible to the public, "it is not surprising that there should be discontent and suspicion, even though there may be no real ground for it; and if the companies should become rich and prosperous, this discontent and suspicion may well be aggravated to such an extent as to become dangerous to them. If they are dealing fairly, it is to their interest to court observation and criticism, and to give the public all possible information about their charges, and the reasons for making them." (Report, p. 39.)

The Committee of 1882 speak to the same effect:—"It is obvious that some of the present difficulties arise from want of knowledge. Some charges which appear *prima facie* to be unequal and unjust turn out on explanation to be fair and reasonable. Private persons have often great difficulty in approaching a railway company, and fail to seek for or to procure information which ought to be at their disposal. In the present relation of railway companies to the public it is eminently to the interest of both parties, as it is the right of the public, that the dealings of the companies should not, like the dealings of private traders, remain a matter of private arrangement, to be disclosed or not, as they think fit, but that they and the reasons for them should be open to all the world." (Report, p. 5.) The great railway companies, in fact, now have a status equal to that of great public departments, and should be both able and willing to bear the light of publicity for all their doings.

senting a capital value exceeding that of the national debt, and intimately affecting the commerce and industry, the comfort and convenience, of the whole nation. With all its inevitable shortcomings this is a great work in legislation, of which Parliament may well be proud.

It is not likely that Parliament will undervalue its past labours, or surrender its right, in this and other like cases, to prescribe the conditions and obligations under which great industrial corporations shall obtain, and continue to exercise, their special statutory privileges.¹ On the other hand, the immense interests at stake in railways, sanctioned, as they have been, by Parliament, could not be safely or fairly left to be dealt with by any inferior authority. The Committee of 1881-2 suggested that,² upon all railway bills, Committees "should have power to alter, modify and regulate" rates and fares, even when authorized by previous Acts, "in the interests of the public, and with due regard to the interests of existing companies." It may be expedient that the Legislature which gave should sometimes take away; it is clear that these wide powers of altering the statutory guarantees upon which money has been subscribed and borrowed by railway companies, could only be properly exercised, if at all, by supreme legislative authority.³

Tramways.

We have seen that horse tramways were used for coal

¹ One recommendation of the Committee of 1881-2 is that, with a view to greater economy and efficiency in the working of Irish railways, not only should Parliament offer every facility for amalgamation, but that, if necessary, it should be brought about by direct legislation. (Report, p. 12.) According to the evidence of witnesses from Ireland, there are in that country "270 directors, 37 secretaries, 20 managers, and a corresponding staff of subordinate officers for the administration of railways having a

capital of 36,000,000*l.*; whereas the Great Western Railway of England, having a capital of nearly twice that amount, is managed by a single board of eighteen directors, a secretary, and a general manager."

² Report, p. 15.

³ As secretary to the Board of Trade, Sir Thomas Farrer concurs with the Joint Committee of 1872, that a revision of rates by any special tribunal, such as the Railway Commissioners, would be inexpedient.—*Ib.*; Min. of Ev., Part I. p. 838.

traffic, even before the introduction of canals, and that they afterwards served as feeders to canals in many parts of Great Britain. From the carriage of minerals and goods to that of passengers would seem but a single step, yet this obvious use of horse tramways was delayed till long after locomotives had overrun the country. One would have expected that, for passengers as well as goods, the natural development of a system of haulage on rails would have been by animal, passing then to mechanical power. But the ancient tramway, with its limited user for minerals and goods, had at one leap become a fixed stage for traffic of all kinds by means of steam traction. It was not until 1859-60 that old methods were revived, and it was found that horse tramways might profitably serve for passenger traffic in country districts which could not support a railway, or in crowded thoroughfares, where the use of locomotives was supposed to be impracticable.

Delay in use of horse tramways for passenger traffic.

In the United States street tramways became common soon after the year 1850, and in 1859 an American, Mr. George Francis Train, laid down two of these tramways in England. One in the metropolis ran from Westminster Bridge to Kennington Gate; the other was at Birkenhead. Both were constructed with the consent of the local authorities, but without Parliamentary powers.¹ Defects in the form of rails interfered so much with the vehicular traffic that in both cases the rails were removed, though not before the convenience of these tramways, especially to the poorer

Earliest street tramways in England.

¹ The want of these powers caused serious embarrassments to promoters, not only of the two tramways mentioned in the text, but of the earlier railways. The chief trouble in the latter case was the liability of individual shareholders for the whole debts of the company. Robert Stephenson, in return for professional services, once accepted ten shares in an undertaking for extending an un-

authorized railway to South Shields, and was only saved from ruin by the grant of parliamentary powers to a proprietary, which bought up the defaulting line with its liabilities, and placed it on a sound financial basis. (See Jeaffreson & Pole's Memoir as to Stanhope and Tyne Railway, Vol. I., Chaps. 11 and 12; Pontop and South Shields Railway Act, 1841.)

classes, and their financial success, had been well established. In view, therefore, of attempts to obtain statutory concessions for similar undertakings, a general measure was introduced in 1861, and was referred to a Select Committee, which sat in that and the following year. The Bill, however, was then withdrawn.

Tramways
(Ireland)
Acts.

Meanwhile, two general Acts were passed indicating clearly enough that tramway legislation was yet in its experimental stage. One of 1860¹ applied to Ireland, and, in order to facilitate internal communication there, authorised the use of public roads and highways for tramways, after approval by Grand Juries, "for the conveyance of passengers, produce, minerals, merchandize, and other goods, in carriages, wagons, and trucks, moved by animal power." Various Amendment Acts have since passed,² and Parliament has taken special care to do all that can be done by legislation to encourage the investment of capital in these undertakings in Ireland.³ Under the general Acts now in force in that country, tramways may be constructed, if unopposed, without the necessity of applying for private Acts. Steam may be used as a motive power, at a speed of six miles an hour in towns and villages, and twelve elsewhere, or without any restriction if the tramway is more than thirty feet from the centre of any public road. Above all, the system of baronial guarantees, long in use in Ireland for the construction of railways, has been extended to tramways. Local authorities, if satisfied that tramways will be of adequate advantage to their towns or districts, may charge local rates in order to secure to projectors for a fixed period interest upon their investments; and the Treasury, under certain conditions, will contribute a proportion of the guaranteed dividend so paid.⁴ Moreover, the advantage of tramways as feeders to railways is recognized by the grant of powers which enable railway com-

Baronial
guarantees
and subven-
tion by Treas-
ury.

¹ 23 & 24 Vict. c. 152.

² In 1861, 1871, 1881 and 1883.

³ See *post*, Chapter on Provisional

Orders, &c., where an analysis of the Irish Tramway Acts is given.

⁴ 46 & 47 Vict. c. 43, s. 9.

panies in Ireland to contribute towards tramways made under the Act of 1883.¹ In 1860, the standard gauge for tramways in Ireland was fixed, like that of the railways there, at five feet three inches; but the actual gauge sanctioned for most of the steam tramways, as well as for light railways, is three feet.

It was thought, in 1861, that horse tramways were especially suited for country districts, where the traffic would not justify the construction of railways. It was also thought that the trustees of turnpike roads might, perhaps, by means of tramways, be relieved from part of their burden of debt, or at least be enabled to pay their way. In Scotland, therefore, trustees of turnpike roads were authorized to form tramways along these roads, borrowing money on the security of the tolls.² In the case of statute labour roads, the trustees might authorize any persons to lay down tramways, but not within the boundaries of any Royal or Parliamentary burgh, unless by consent of the magistrates and council.³ Hitherto, this Act has been inoperative.⁴

Tramways
(Scotland)
Act, 1861.

Notwithstanding the inquiries and projected legislation of 1861-2, no public measure relating to tramways passed until the year 1870. Before that period, in 1865-6, applications were made without success for private Bills to sanction tramways in London and Liverpool. In 1868, Bills were passed for the construction of tramways in Liverpool, and also from the Somerset and Dorset Railway at Glastonbury to Street;⁵

Earliest
Tramway
Acts.

¹ *Ib.* s. 11.

² It is necessary, however, to obtain the written consent of creditors representing two-thirds of the trust debt. (24 & 25 Vict. c. 69, s. 8.)

³ *Ib.* s. 16.

⁴ "Most of the turnpike roads in Scotland are largely burdened with debt, and are even unable to keep down the accruing interest. In many cases, also, the principal creditors are railway companies who, even if any fresh credit were obtain-

able, have an obvious reason for withholding their consent. The trustees are thus, at the very outset, precluded from taking advantage of the Act." As to the statute labour roads, they "are merely the cross-roads of the country, and accordingly hold out even less inducement than turnpike roads to tramway undertakings." (*Sutton on Tramways*, 2nd ed.; *Int.*, p. 50.)

⁵ 31 & 32 Vict. c. 167; *Ib.* c. 98.

in 1869, Parliament sanctioned three schemes for tramways in London.¹ These Acts contained only such provisions in the public interest as were suggested by the Board of Trade, and adopted by the respective Committees to which they were referred. There was evidently a danger lest tramways, like the earlier railways, should escape from the general control which might be deemed necessary for the protection of the public. A public measure was therefore introduced in 1870, for the regulation of tramways, and became law after its provisions had been examined by a Select Committee.²

Tramways
Act, 1870.

Tramway
Provisional
Orders.

With a view to relieve promoters from the cost of private Bills where their projects are unopposed, or meet with trifling objection, this measure authorizes the Board of Trade to grant Provisional Orders for tramways.³ These Orders may be obtained by local authorities, or by any persons or companies with the consent of local and road authorities. An absolute veto is given to local and road authorities having jurisdiction over two-thirds of the roadway.⁴ The same power of veto is given to one-third of the frontagers along any part of the road where, for a distance of thirty feet or upwards, a less space than nine feet and a half is left between the footpaths and the rail.⁵ If a tramway is made by the local authorities they may lease it, or leave it open to the

¹ In Whitechapel, Mile End, Bow, Stratford and West Ham, by the North Metropolitan Company; in Lambeth and Kennington, by the Metropolitan Street Tramways Company; and from Pimlico to Peckham and Greenwich. (32 & 33 Vict. cc. 101, 94, 95.)

² 33 & 34 Vict. c. 78. The Act extends to Scotland, but not to Ireland.

³ Part I. of Act.

⁴ 33 & 34 Vict. c. 78, s. 4. When a tramway is proposed in two or more districts under separate local

administrations, the Board of Trade (sect. 5) may dispense with the consent of a local or road authority if it has jurisdiction over the site of not more than one-third of the total length of the tramway. In such cases the Board of Trade must make a special report, stating the grounds upon which they have acted; but, in common with any other petitioners, the dissenting authority is at liberty to oppose the Orders in Parliament, just as in the case of a private Bill. (Sect. 14.)

⁵ 1b. s. 9.

public and take tolls for the use of it; but they must not themselves work the tramway.¹

Promoters are required to incorporate Parts II. and III. of the Act of 1870 with all Orders and Private Acts, and these general provisions, therefore, prevail except where they are varied by the special legislation. For example, the gauge of all tramways, if not otherwise prescribed, is to be of four feet eight and a-half inches.² Part II. deals with the power of opening roads which must necessarily be exercised by promoters, and protects the respective rights of local authorities, and of gas and water companies. Part III. provides for the insolvency of promoters and the discontinuance from any cause of the working of a tramway. In order to guard against the creation for all time of fresh statutory monopolies, similar to those in gas and water, local authorities are enabled to purchase any tramway undertaking twenty-one years after it was authorized. The terms of purchase are very favourable to local authorities, who can only be called upon to pay the bare value of the rails and of any lands, buildings and plant, without any allowance for goodwill, and also without any compensation for compulsory sale, or other consideration whatever.³ In numerous cases, local authorities have obtained clauses requiring the promoters to sell their undertaking, upon special terms, within shorter periods than that mentioned in the Act.⁴ Maximum tolls and charges are specified in each Special Act.

Incorporation of parts of Act in all tramway Orders and Bills.

Power of local authorities to purchase all tramways.

Tolls and charges.

¹ Ib. s. 19.

² Ib. s. 25. This gauge was adopted in order to facilitate an interchange of traffic with railways, but as such interchange has proved very rare, a narrower gauge has, in practice, been adopted for tramways, varying from two feet to the standard gauge.

³ Ib. s. 43.

⁴ See, among others, the cases of Edinburgh, Southampton, Dundee, Sheffield, and Aberdeen, collected in

Sutton, pp. 79—81. "Local authorities have availed themselves largely of the facilities offered to them, both as original promoters and subsequent purchasers, as is shown by the fact that, of the mileage open at the present time (1883) in the United Kingdom, the proportion owned by local authorities is about three-eighths of the whole. Of the expediency of such action there can be no question. The inconvenience and damage which tramways have caused

Parliamentary inquiries as to tramways.

Veto of local authorities.

Careful inquiry has, at various times, been made, by Parliament into tramways. The Committees of 1861-2, and of 1870, have been already mentioned. In 1877, and the two following Sessions, both Houses heard evidence upon the working of the Act of 1870. One of the chief subjects of investigation has been the large powers given by the Act to local authorities, and especially the absolute veto which they may exercise in preventing most applications by promoters for Provisional Orders. This right is not recognized by the Act when promoters proceed by private Bill, but in such cases the same right is given to local authorities by Standing Orders of the two Houses.¹ The object of Parliament was no doubt to secure a control by municipal and other bodies over undertakings which appropriate a considerable part of the surface of the roadway within their jurisdiction, and may interfere prejudicially with traffic and with the convenience of the inhabitants.² In practice, however, local authorities, while admitting that, on the whole, tramways would be of public advantage within their districts, and while securing from tramway promoters large contributions towards the maintenance of their streets and roads, have also demanded terms which are sometimes a serious hindrance to tramway construction or extension, or altogether prevent it. In some cases promoters have been required to carry out, in whole or in part, street improvements by no means essential to the proper working of

to the owners of carriages and vehicles of every description, and the unsatisfactory condition to which they have in many cases reduced the public roads, is due, not so much to any inherent difficulty in laying a tramway which shall not be a public nuisance, as to the divided responsibility and the conflict of jurisdiction which arises where the roadway is divided into two portions, constructed on different principles, and each

vested in a different authority." (Sutton; Introduction, p. 21.)

¹ See S. O. 22 of Lords and Commons (Session, 1885).

² The Common Council of the City of London have always refused to allow tramways within the City, an exercise of the right of veto which may be justified on grounds of probable interference with traffic in thoroughfares so crowded

the tramway.¹ Other terms have lately been insisted upon which seem to claim for some local authorities rights far in excess of those which could have been contemplated by Parliament in 1870.²

Upon this point a Committee of the House of Lords, which sat in 1879, following Committees of the other House in two preceding Sessions, came to the conclusion that the preliminary consent of local authorities should be still required, subject to an appeal to the Board of Trade, where the proposed tramway passes through two or more districts, the authorities of which differ in opinion.³ Thus an absolute veto would still remain to a town council or other body if the proposed tramway were wholly situate within their district; and in this, as indeed in most other cases, local authorities would still be able to dictate their own terms, prohibitive, though these may be, of undertakings which Parliament has pronounced to be of public utility.⁴ It is fortunate for gas and water companies that they were not made liable to

Lords' Committee on tramways, 1879.

¹ See Lea Bridge, Leyton and Walthamstow Tramway Act, 1884, in which the company are bound, before opening a section of their line for traffic, to defray the main cost of widening part of the road (sect. 32), an improvement desired and debated by the Local Board of Works long before the tramway was proposed. Some extensions in East London, proposed in the company's deposited Bill, were abandoned owing to the terms insisted on by the local authorities.

² In the Edinburgh Northern Tramways Bill, 1884, the municipalities of Edinburgh and Leith, as the price of their assent to the Bill, required (*inter alia*) the payment by the company of a way-leave, rising by yearly gradations to 100*l.* per mile per annum. This provision passed a Committee of the House of Commons, but was struck out in

the House of Lords as being contrary to public policy. (47 & 48 Vict. c. 241.)

³ Summary of Recommendations, No. 2.

⁴ The Lords' Committee also suggest (Recommendation 3) that "there should be freedom of contract between the local authority and the promoters as to contributions to local rates, fares, tolls and general charges, subject to an appeal to the Board of Trade." But this right of appeal respecting terms is of little use as long as the veto of local authorities enables them to dictate their own terms. At the same time, the Lords' Committee were of opinion (Recommendation 7) that the veto given by sect. 9 of the Act of 1870, under certain circumstances, to one-third of the frontagers should be taken away.

similar demands. In principle these cases are not easily to be distinguished, though, measuring their degree of importance, easier and cheaper locomotion may not be as essential as light and water, and tramways occupy the surface, not the subsoil of streets.

Use of steam
and mechanical
power.

Of late, on the score of economy as well as of humanity, animal power on tramways has been generally deprecated.¹ On routes where the gradients are severe, horses cannot work the traffic. A cable tramway, for some time used in San Francisco, Otago and elsewhere, and worked by fixed engines, has been lately sanctioned in this country on some of these routes.² The Lords' Committee viewed with favour the substitution of steam or other mechanical power for horses, recommending that the use of it should be conceded for limited periods of seven years, under conditions giving "reasonable security for public safety and for the freedom of ordinary traffic," and at the same time "elastic enough not to throw needless impediments in the way of the development" of the new system. Most modern Tramway Acts now accordingly provide for horse traction in the first instance, and for the future adoption of steam or other mechanical power, subject to the approval, and to be worked under the regulations, of the Board of Trade.³ Local authorities some-

¹ The House of Commons' Committee of 1877 says that "common humanity loudly demands some other motive power than horses. Owing chiefly to the heavy strain in setting the car in motion after stoppages, a horse is worn out after five years' service on tramways. As to economy, Mr. Hopkins, engineer to the North Metropolitan Tramways, estimated, in 1877, that the saving to be expected from the application of steam would amount to at least 2*d.* per mile run, or about 20 per cent. of the working expenses of this company, whose cars run more than 4,500,000 miles annually. Major-

General Hutchinson, Railway Inspector of the Board of Trade, thought that the cost of steam on tramways might prove no more than half that of horse power." (Sutton, *Int.*, pp. 42, 43, n.) In practice, however, the economy in the use of steam has proved less than was expected.

² Highgate Hill (Provisional Order Confirmation Act, 1882); Edinburgh (Northern) Tramways Act, 1884, s. 26.

³ The clauses to this effect, framed to meet the requirements of the Board of Trade, and embodying also the views of Committees, are generally

times require that their assent shall also be necessary before mechanical power is adopted, and that its use shall be discontinued upon notice from them.

Under some general clauses in the Tramways' Orders Confirmation Act, 1879, the Board of Trade was authorized to license for a limited period not exceeding one year, and as an experiment only, the use of steam or other mechanical power on any tramways then sanctioned. Licences so granted may at any time be suspended at the discretion of the Board. The conditions of the licence are also prescribed by the Board, who require that the written consent of each local and road authority shall first be obtained by the company.¹ Among other conditions, the engine must be fitted with an efficient brake, and with a governor so arranged that at any time, when the engine exceeds a certain speed, the steam shall be shut off and the brake applied. The engine is to be free from noise produced by blast or clatter of machinery; at all points above four inches from the level of the rails, the machinery and fire must be concealed from view; and no steam or smoke must be emitted.² Upon tramways authorized since 1879, the Board of Trade possesses no such power. Any authority which the promoters of these tramways may have for the use of steam or other mechanical power must be contained in the special Act or Provisional Order.

Tramways' Orders Confirmation Act, 1879.

Hitherto, the more or less well-founded objections to steam or other mechanical power, through the danger to ordinary traffic, have prevented the use of this cheap and convenient mode of traction in towns. But the examples before given of rural tramways, hardly to be distinguished from railways, on which steam has been sanctioned,³ show that a considerable future is open to these tramways as cheap substitutes for

Future of tramways.

identical, and limit the use of mechanical power to a period of seven years.

¹ 42 & 43 Vict. c. 193, ss. 3 *et seq.*

² Regulations of Board of Trade (Railway Department) under 42 & 43 Vict. c. 193, s. 3 *et seq.*, dated November, 1881.

³ *Ante*, p. 78, note.

railways, as well as valuable feeders to them. In towns, too, the invention of a noiseless, harmless locomotive, under immediate control, and satisfying the other conditions expected of it, is only a question of time. Such an invention would quicken the spread of valuable facilities for passenger and goods traffic, both in town and country. Meanwhile, the difficulties arising between local authorities and private promoters, as well as the bad repairs of roads due to a divided control over the repairs, might be in great part removed if local authorities would act on the recommendations of the Lords' Committee, and themselves construct and maintain tramways, afterwards leasing them to some working company. Local authorities, however, may not always care to take upon themselves this responsibility, or may think that, armed with a veto upon any project, as well as with the power to buy it on very favourable terms in twenty-one years, they can do better by leaving tramways to be made by private companies.

First River
Tunnel Act,
1805.

The statutory history of tunnels under rivers begins in 1805 with a scheme for making "an archway or archways" beneath the Thames below London Bridge, from Rotherhithe to the Middlesex shore. This scheme was approved by Parliament.¹ The archways were to be "of convenient breadth for the passage of cattle and carriages, or of foot-passengers only;" and the preamble declares that the work would be not only of local advantage but of "great national advantage as a military road or pass." More than seventy promoters are named in the Act,² and are formed by it into "the

¹ 45 Geo. III. c. 117.

² In all narratives of British enterprise, engineers and contractors receive their due share of praise, but little mention is made of the men who had faith in the work and supplied the money to carry it out, at a time when success, both in finance

and engineering, seemed to most people doubtful. Appendix C. contains the names, taken from the respective Acts, of the associated adventurers in the two Thames tunnel undertakings, and in the Stockton and Darlington and Liverpool and Manchester railways.

Thames Archway Company," with power to raise 140,000*l.* by shares and 60,000*l.* on loan. The scheme included two tunnels with convenient approaches, one beginning on the Middlesex bank "near to the ancient horseferry landing in the parish of St. Anne, Limehouse," and emerging at the opposite horseferry landing-place, Rotherhithe; the second one from Wapping New Stairs, Middlesex, beneath the river to Rotherhithe Stairs, Surrey. The time limited for the purchase of lands was seven years.¹ A noteworthy provision² was that, before the company bored under or undermined any houses or buildings for the purposes of their works, they should purchase and pay for such houses or buildings, unless the undermining "be done at a safe and secure depth, so as not to affect the houses and buildings so to be undermined, or to endanger the lives and property of those living and residing therein." Apparently the doctrine *cujus est solum, ejus est usque ad cælum* was not in this case meant to apply in the opposite direction.³ Owners might, as now under the Lands Clauses Acts, refuse to sell part of any property affected, and might require the company to take the whole; but in the case of a vacant plot of land they could not insist on the purchase of more than one acre.⁴ The tolls for every wheel on every coach, chariot, landau, berlin, chaise, calash, curricule, chair, or other such carriage were 2*s.* if drawn "by six or more horses, or other beasts," and 1*s.* 6*d.* if drawn by less than four horses. Upon waggons, wains, or carts, the charges were more moderate, and were in like manner assessed on each wheel, varying with the number of horses. There was a scale for animals, and twopence was to be paid for each foot passenger.

Thames
Archway
Company.

Compulsory
taking of
land.

Tolls.

Thames
Tunnel Act,
1824.

Works in connection with this undertaking proved a failure,

¹ Sect. 29.

² Sect. 27.

³ The provision quoted in the text was omitted from the Thames Tun-

nel Act of 1824 (see sect. 24); the rest of the section was adopted.

⁴ This proviso was followed in the Act of 1824 (sect. 49).

both under Mr. Vase, as engineer in 1805, and two years afterwards under Mr. Trevethick.¹ Proposals for a tunnel were revived in 1823 by the elder Brunel, and an Act was obtained in 1824.² Here we find his son's name, along with those of 230 other adventurers, incorporated into "the Thames Tunnel Company," which was to have so great an engineering success, and to be so complete a commercial failure. The subscribed capital was 200,000*l.*, with power to raise 50,000*l.* on mortgage. The estimate was 160,000*l.*, of which, such was the confidence in the work, the sum of 141,000*l.* was subscribed before the passing of the Act. Five years was the period limited for the purchase of property. The tolls followed closely the precedent of 1805.

As the work went on its difficulties were more fully seen. In May, 1827, the water broke in, and all progress was for a time stopped.³ A second irruption, causing a serious loss of life, occurred in January, 1828, when Mr. Brunel himself was much injured and narrowly escaped drowning in an attempt to rescue some of the workmen. In May of the same year the company obtained from Parliament further powers of raising money, and public confidence in the work must have been shaken, for the Act⁴ recites that the balance of 40,000*l.*, required to complete the original capital of 200,000*l.*, had not been subscribed, and that no part of the loan capital had been raised. A further capital of 200,000*l.* was therefore authorized, to be raised by preference shares or by mortgage. In the latter case a sinking fund was to be

Act of 1828.

¹ A high level suspension bridge, not intended for heavy traffic, was then proposed, but this project also came to nothing.

² 5 Geo. IV. c. 156.

³ Sir Isambard, in his diary, under date May 20, says: "The Rotherhithe curate, in his sermon to-day, adverting to the accident, said it was but a just judgment upon the pre-

sumptuous aspirations of mortal men, &c. The poor man!"—Life of I. K. Brunel, by his Son, p. 30. The works were begun on the Surrey side by sinking a shaft at Rotherhithe. Early in 1827, though then barely twenty-one, Mr. Brunel had been appointed resident engineer under his father.

⁴ 9 Geo. IV. c. 63.

created. The company were also enabled to open the tunnel for foot passengers, although it might not have been made passable for horses and carriages, or they might sell the undertaking.¹ The limit of time imposed for purchasing property was extended to a further term of five years after the passing of the Act, and seven more years were allowed to make the tunnel passable for foot passengers.²

In 1833, as the attempt to raise money by shares or on loan had proved ineffectual, Parliament authorized the Treasury to advance the sum of 270,000*l.* upon an assignment of the undertaking.³ A further period of three years was also given to the company to buy the necessary property, and ten years for opening the tunnel for foot passengers. For seven years the works had been suspended. By the help of this loan they were recommenced early in 1835. Before the Wapping bank was reached the river made three more breaches, two in 1837 and one in the following year. In 1840 it was necessary to obtain another extension of time for the purchase of lands.⁴ At last, March 25, 1843, the tunnel was opened for passenger traffic, more than eighteen years after the work had been begun. Meanwhile the Public Works Loan Commissioners had become mortgagees in possession, for securing the payment of the Imperial loan. As the traffic proved wholly unremunerative, the tunnel was in 1865 sold for a sum of 200,000*l.* to the East London Railway Company,⁵ who now, by its means, connect the southern railways with those on the north bank of the Thames. Out of the purchase-money, the Public Works Loan Commissioners accepted 100,000*l.* in discharge of the debt due to the State.⁶ The company, which had no mortgage debt and few other liabilities, were thus left with

Treasury loan
for complet-
ing tunnel.

Tunnel
opened,
March, 1843.

Sale to East
London Rail-
way Com-
pany.

¹ 9 Geo. IV. c. 63, ss. 31 and 33 *et seq.*

² *Ib.* ss. 36, 37.

³ 3 & 4 Will. IV. c. 121, s. 2.

⁴ 3 & 4 Vict. c. 50.

⁵ 28 Vict. c. 51. See agreement scheduled to Act.

⁶ 29 Vict. c. 20, Preamble.

Dissolution of
company.

100,000*l.*, and some other property, to divide among shareholders who had subscribed 172,000*l.* Their affairs were wound up, and the company formally dissolved in 1866.¹ This, however, was not their final disappearance from the statute book, for in 1876, as their surplus lands on the Surrey bank of the river had not then been sold, the period which had been allowed for realizing and distributing their assets was extended to 1879.²

Subways
under
Thames.

As yet the East London line, passing through Sir Isambard Brunel's tunnel, remains the only railway under the Thames, but many subways have, at various times, been authorized by Parliament above and below London Bridge, at the instance of projectors who were not discouraged by the commercial failure of the first tunnel. Giving these in the order of date, one, in 1866, was sanctioned for a subway from Deptford to the Isle of Dogs.³ Two years afterwards the Tower Subway Company was incorporated for making a means of communication from Tower Hill to the opposite side of the river.⁴ In 1870 a subway was sanctioned under the Thames between Southwark and the City,⁵ a scheme not then carried out, but revived and again sanctioned in 1884.⁶ A communication under the river from the Temple to a point near Waterloo Station was authorized in 1872,⁷ and in 1882 an electric railway passing beneath the river from Charing Cross to the same station.⁸ A subway between North and South Woolwich obtained the assent of Parliament in 1874;⁹ and, in 1877, two similar communications under

¹ 29 Vict. c. 20, *ss. 2 et seq.*

² 39 Vict. c. 37, s. 2.

³ 29 & 30 Vict. c. 177.

⁴ 31 & 32 Vict. c. 8. A subsequent Act (34 & 35 Vict. c. 7) enabled the company to raise additional capital. The subway was then made, and is now (1885) the only completed communication between the Surrey and Middlesex shores below bridge,

except Brunel's tunnel.

⁵ 33 & 34 Vict. c. 124.

⁶ 47 & 48 Vict. c. 167.

⁷ 35 & 36 Vict. c. 137.

⁸ 45 & 46 Vict. c. 255.

⁹ 37 & 38 Vict. c. 86. Extension of time Bills passed in 1879 (42 & 43 Vict. c. 7) and in 1881 (44 & 45 Vict. c. 23).

the Thames between Greenwich and Millwall,¹ and between Limehouse and Rotherhithe.²

As only one of these projects had been carried out, and, in spite of the establishment of a steam ferry, means of communication between the two banks of the Thames were still deficient, the Metropolitan Board of Works, in 1879, submitted to Parliament a plan for a high level bridge, which was defeated because the bridge was not high enough and would interfere with the navigation. In 1882, the Board proposed another high level bridge near the Tower, with two subways, one under the river at Shadwell, the other at Blackwall. This plan, to cost 5,200,000*l.*, was based on the renewal by Parliament of the coal and wine duties, and was withdrawn on the refusal of the Government to recommend such renewal. In 1884 the Metropolitan Board, no longer commanding the same funds for improvements, came to Parliament with a modified plan for a subway about one mile below London Bridge, from Nightingale Lane on the north to Bermondsey Walk on the south bank, and six hydraulic lifts at each end. A hybrid Committee of the House of Commons rejected this plan, which would have cost two millions, as well as a low level duplex bridge proposed by a private company, and recommended that a low level swing bridge should be constructed by the Corporation of London at Little Tower Hill, and that the Metropolitan Board should make a subway on the site originally proposed by them at Shadwell.³

Lastly, an Act of 1882 incorporated a company for the construction of a railway under the Thames, from the Essex to the Kentish shore, between Tilbury and Gravesend, there joining the South Eastern line. The tunnel thus authorized

Schemes of
1882 and
1884.

Tilbury and
Gravesend
Tunnel Rail-
way, 1882.

¹ 40 & 41 Vict. c. 64. The powers of the company, which had lapsed, were revived and extended in 1882 (45 & 46 Vict. c. 113).

² 40 & 41 Vict. c. 195. The time for the completion of this subway was also extended in 1882 (45 & 46

Vict. c. 207).

³ Report of Committee on Thames Crossings, 1884. In 1883 a subway bill, privately promoted, was defeated by the Metropolitan Board in the House of Lords on the ground of its approaches.

was to be completed in five years, and the estimate for its cost, in addition to about four miles of railway, was 600,000*l*. In consideration of this exceptional outlay the company were allowed to charge, in addition to the ordinary tolls, a six miles' rate for conveyance through the tunnel.¹

Severn Tunnel Act, 1810.

Though the various enterprises sanctioned by Parliament for tunnels beneath the Thames have here been followed to their close, the Severn comes, in strict chronological order, after the first Metropolitan Act of 1805. Five years subsequent to the Thames Archway statute, in which the word "tunnel" does not occur, powers were given for "making and maintaining a tunnel or road under the Severn," from Newnham to Arlingham in Gloucestershire, a point at which the river was nearly a mile wide. This Act² recited the great inconvenience sustained by the want of any communication over the Severn below the city of Gloucester otherwise than by ferries, the passage of which was generally attended with delay and sometimes with danger. An "uninterrupted land communication between the two banks" at the points mentioned, "with proper entrances and avenues to connect the same with the turnpike roads on each side of the river," would therefore "be attended not only with considerable advantage, and particular convenience to the western parts of the county of Gloucester and the principality of Wales, but also with great national benefit." A "Severn Tunnel Company" were for this purpose incorporated, but their money powers were absurdly inadequate, as they only proposed to raise 12,000*l*. by shares and 8,000*l*. by mortgage of the authorized tolls. The use of rails in the tunnel was contemplated, and the tolls were assessed at so much per ton "for all goods carried in carriages used on or adapted to rail or tram roads;" on carriages of other descriptions, 1*s*. 6*d*. "for every wheel on every coach, chariot, landau, berlin, chaise, calash, curricule or chair;" and 1*s*. per wheel on every waggon, wain, or cart. For foot-

¹ 45 & 46 Vict. c. 220.

² 50 Geo. III. c. 124.

passengers the toll was twopence. It is needless to say that this scheme came to nothing.

More than sixty years passed before any other attempt was made to tunnel under the Severn. The Great Western Railway Company then, in 1872, undertook to connect the Bristol and South Wales Union Railway with the South Wales Railway by a short link, about eight miles long, passing under the Severn at a point where it is two and a quarter miles wide, and connecting the counties of Gloucester and Monmouth.¹ The authorized share and loan capital was 1,000,000*l*. As there was a coal-field on both sides of the river, some difficulties in construction were apprehended. Power was therefore taken to abandon the work if it were found that from the nature of the rock or other formation in the river bed, or from any other cause, the expense of construction "would be likely to far exceed the estimated cost."² After many inevitable delays, arising from inroads of water, this great engineering work is now (1885) nearly completed. As the cost of construction would have made a mere mileage toll unremunerative, the company are empowered to charge, for conveyance through the tunnel, in addition to all other lawful tolls and rates, the equivalent of a twelve miles' toll.

Severn Tunnel Railway Act, 1872.

Another kindred work of equal importance, though presenting much less engineering difficulty, was authorized, in 1880, by an Act "for making tunnels, subways and roadways under the Mersey between Liverpool and Birkenhead."³ The share capital for this work was 500,000*l*., with 165,000*l*. of loan capital. For each foot passenger one penny might be charged, and tolls were specified for other traffic. A provision specially deserving of mention was that, under certain conditions, the municipalities of Liverpool and Birken-

Mersey Tunnel.

Provision for transfer to public trust.

¹ The tunnel itself is 4 miles 28 chains in length. The approaches on both sides are 3 miles 16 chains in length. It has been necessary to protect, by a sea-wall 15 ft. high,

a cutting 33 ft. deep, near the mouth of the tunnel, which would otherwise be endangered by floods.

² 35 & 36 Vict. c. 53, s. 33.

³ 43 & 44 Vict. c. 152.

head were empowered to procure the transfer of this tunnel to a public trust. In the case of a new arterial communication of prime importance to the population on both banks of the Mersey, this provision would have given a valuable security against monopoly and undue rates. But this work has not been begun. A railway tunnel was authorized, in 1866, by the Mersey Railway Act, the powers conferred by which were continued by various later statutes; and this tunnel, connecting the important railways on either side of the Mersey, is now nearly completed.

In 1864, a tunnel under the Liffey to carry the Dublin Trunk Connecting Railway was authorized by Parliament, but was abandoned after 70,000*l.* had been spent on the works.

The River
Neath.

An Act of 1883¹ allows a railway to be carried under the Neath, a previous proposal to cross that river by a bridge

The Humber.

having failed. A plan for taking a railway across the Humber through iron caissons sunk in the river-bed was rejected by Parliament in 1873, and proposals for making bridges over that river have also more than once been rejected on the ground of their interference with the navigation.

Channel
Tunnels.

Still more magnificent schemes than any of the foregoing have lately been proposed, for connecting Great Britain with the Continent by submarine tunnels for railway transit under the Straits of Dover. In 1874, the South Eastern and London, Chatham and Dover Railway Companies obtained authority from Parliament to apply 20,000*l.* a-piece "towards the cost of any soundings and of any borings, shafts, driftways or other works in connection with the construction of a tunnel under the English Channel."² These powers led to the formation of two companies, registered under the Joint Stock Companies Acts: the Submarine Continental Railway Company, Limited, of which Sir Edward Watkin was chairman, and the Channel Tunnel Company, Limited, presided over by Lord Richard Grosvenor.

South Eastern
Railway Act,
1874.

¹ Rhondda and Swansea Bay Rail- 47 Vict. c. 146).

way (Swansea Extension) Act (46 & ² 37 & 38 Vict. c. 103.

In connection with these companies, plans for two tunnels were prepared, borings were taken, the work was declared practicable by English and by French engineers, and the preliminary works were begun. In 1883 a Bill was introduced authorising the Submarine Continental Railway Company to make a tunnel railway beneath the bed of the sea in the Straits of Dover, beginning at a point near Shakespeare's Cliff at Dover, forming a junction there with a new line of the South Eastern company, and thence continuing underneath the bed of the sea, by a course described in terms quite new in railway engineering, "first easterly and then south-easterly, and terminating at a point beneath the bed of the sea 51 degrees, 4 minutes, 41 seconds north latitude, and 1 degree, 22 minutes, 49 seconds east longitude from Greenwich." Upon the works begun in anticipation of this Bill, the Board of Trade, representing the rights of the Crown in the foreshore, placed a veto, pending a decision by Parliament upon the general policy of the undertaking. In 1884 the Bill was re-introduced, and was read a first time in the House of Commons, February 12. Meanwhile, a joint Committee of the two Houses heard evidence in 1883 from military men of high position,¹ as well as from scientific and commercial witnesses; and a majority of the Committee reported against any tunnel, on the ground that it would diminish our present insular security. The Bill, therefore, was not further proceeded with.

South Eastern
and Channel
Tunnel Rail-
ways Bill,
1883-4.

Joint Com-
mittee on
Channel Tun-
nels, 1883.

We pass now to another enterprise of the century, one of the highest interest and importance, for the development of which Parliamentary powers were indispensable. Fully a hundred years before any proposal is recorded for turning coal gas to economical or commercial uses, its illuminating properties were noticed. Papers on the subject were communi-

Gas.

¹ The Duke of Cambridge, Lord Wolseley, and Sir Lintorn Simmons were among the witnesses, whose opinions were as conflicting as those

of the Committee. See Report and Evidence, No. 248 of 1883; Hansard's Debates for 1883-4.

Early experi-
ments—

At White-
haven ;

By William
Murdock.

Winsor's
Patent, 1804.

Gas Light
and Coke
Company's
Bill, 1809.

cated to the Royal Society in 1659 by Mr. Shirley ; in 1733, by Sir James Lowther ; and six years later by Dr. Clayton, Dean of Kildare. Experiments on the distillation of coal and the "elastic inflammable air" thus obtained are described by Dr. Stephen Hales in a work published in 1726.¹ The first proposal to apply coal gas for public or private use appears to have been made in 1765 by Mr. Spedding, Lord Lonsdale's agent at Whitehaven, who suggested that the streets of the town should be so lighted. On the rejection of his plan he used gas to light his own office. Twelve years afterwards, in 1777, William Murdock, an ingenious Scotch engineer, amused himself by making gas from coal upon an open fire, using a kettle for a retort. In 1792, when employed at a Cornish mine, near Redruth, he lighted his house and office with gas ; in 1798 he lit up part of the Soho foundry at Birmingham ; and at the same place in 1802 he used gas for illuminations, upon the rejoicings for the Peace of Amiens.² The first patent in connection with gas lighting was taken out in 1804 by Mr. Winsor "for an oven, stove, or apparatus for the purpose of extracting inflammable air, oil, pitch, tar, and acids from, and reducing into coke and charcoal, all kinds of fuel"; and the patentee pointed out that the inflammable gas or air might be used not only to produce light and heat but to increase and multiply force and power. In January, 1807, Mr. Winsor lighted portions of Pall Mall with gas, and in the same year formed a gas manufacturing company, with a capital of 20,000*l.*, in order to supply artificial light for public and domestic use ; but a charter of incorporation was refused until Parliament had considered the expediency of granting these novel powers.³

In 1809 a Bill was accordingly promoted in Parliament "to incorporate certain persons for procuring coke, oil, tar, pitch, ammoniacal liquor, essential oil, inflammable air from coal, and other materials; and for other purposes."

¹ Vegetable Statics, Vol. I. 4th ed., pp. 6-10.

² Hughes's Treatise on Gas Works, . ³ *Ib.* pp. 12-18.

The Bill was first considered in the House of Commons, Petition for Bill. where the promoters' petition set forth "that coke, oil, tar, pitch, ammoniacal liquor, inflammable air, and essential oil may be procured from coal; that the said coke may be beneficially employed for fuel in private houses and manufactories; that the oil, tar, pitch, ammoniacal liquor and essential oil may be used divers ways with advantage; that the said inflammable air, being conveyed by means of pipes, may be safely and beneficially used for lighting public streets, squares, market places, and large manufactories, and for lighting private houses; that the introduction of such articles into general use will be greatly beneficial to the public; that the public cannot obtain the full benefit to arise therefrom, unless a large subscription be entered into for the purpose of manufacturing such articles; and praying that leave may be given to bring in a Bill for constituting the petitioners, and all other subscribers to the said undertaking, one body corporate, by the name of the Gas Light and Coke Company."¹

A Select Committee was appointed to consider the Bill, Committee on Bill. and met for the first time on May 5. The first Sir Robert Peel served upon it; Mr. Mellish acted as Chairman; and according to the practice of the time, all members inclined to attend the Committee had voices. William Murdock, Opposing petition by Murdock. describing himself as "of Soho foundry, in the county of Stafford," was the only opponent.² His counsel was Mr. Brougham; the promoters were represented by Mr. Warren and Mr. Harrison. Among the witnesses for Murdock was Humphrey Davy, then Secretary to the Royal Society and Professor of Chemistry at the Royal Institution. The chief grounds of opposition were (1) that there could be no claim on the part of the company to original discovery, inasmuch as apparatus designed by Murdock to obtain the same results was already in working at the Soho works; (2) that the incorporation of the company would tend to set up a mono-

¹ 64 Com. Journ., Feb. 24, 1809.

² Ib. p. 278.

poly; (3) that all the objects of a chartered company could be effected by individuals. "The Company," it was said, "will probably vanish in the course of a few years. In the meantime it will not only have drawn in a number of persons to adventure in its shares while such a traffic thrives, but it will have driven out of the trades which it may attempt to carry on all persons of confined capital, trading under the ordinary restraints of law."¹

Extravagant
expectations
of profit.

The promoters' expectations of profit must have been tempting indeed, if it be true, as Murdock stated, that, upon every 5*l.* of capital invested, they reckoned a return of 570*l.* per annum, "even after throwing off, first, half, and then nine-tenths of the other half of the first estimated profits, to guard against the possibility of error."² He strenuously denied the allegation of the promoters that the manufacture of gas light and its accompaniments of oil, tar, pitch, ammoniacal liquor, inflammable air, and essential oil, could not be brought into general use, or be made of full advantage to the public, except by the statutory incorporation of a body of subscribers. In answer to these attacks the promoters denied that the Bill attempted to establish any monopoly, nor could one be inferred from its stipulations, for the products in which the company would deal, and the means of obtaining them, would be open to the whole world. It was true then, as now, that a gas or water company acquires no absolute monopoly from Parliament under the Acts constituting it; though the necessity of obtaining for a rival company Parliamentary powers over the same streets and roads amounts to a practical monopoly far more complete than is created by the grant of statutory powers for railways. A monopoly of a more serious nature (so these promoters argued before the Committee of 1809) might be looked for if mere private adventurers were allowed to obtain and supply light and other

Apprehended
monopoly.

¹ Minutes of Evidence; Commons' Paper, 1809 (220).

² *Ib.*; Circular issued by Murdock to members of Parliament soliciting their votes against the Bill.

products from gas. This new business "would probably then fall into the hands of combinations of individuals, already so powerful and overgrown; and the public would be completely at their mercy if they continued the business, while the public would lose the benefit of the results if caprice or private interests induced them to abandon it."¹

On both sides the arguments now seem far-fetched. Notwithstanding the novelty of the proposal, the admitted claims of Murdock to prior discovery, and the eloquence of his advocate, the promoters carried the Committee with them.

A report in favour of the Bill was made to the House on May 17.² The Bill, as amended, was accordingly ordered to be ingrossed; but, on June 2, the third reading was negatived by a majority of 52 to 38.³ In the debate not a

Favourable
report of
Committee.

Bill defeated
on third read-
ing.

single voice seems to have been raised in favour of the Bill, except by Mr. Mellish, Chairman of the Select Committee.

Mr. D. Giddy, the chief spokesman, among many others, against the project, opposed it, he said, first, because he objected upon general principles to grant chartered monopolies to any great body of men, thereby excluding all competition. Some exceptions there might be where great advantages were offered to the public, and the fortunes of individuals were inadequate, such as the New River, canals, or the West India Docks. But he would not further a scheme like this, of doubtful practicability in itself, and intended to procure subscriptions to an amount which would enable the company to monopolize oil, coal and other materials, now affording the public alternative methods of lighting. "It appeared that in the parish of St. James's alone six different establishments would be required to furnish the light; what, then, must be the number of establishments for all London?" In his opinion, the project might ulti-

Arguments in
debate:
Mr. Giddy.

¹ Commons' Paper, 220, of 1809;
Minutes of Evidence.

² 64 Com. Journ. of 1809, p. 316.

³ Ib. p. 380.

mately turn out a second South Sea Bubble, the failure of which would bring disgrace upon the nation.¹

Mr. Wilberforce.

Mr. Wilberforce also opposed the Bill, and called attention to the extravagant expectations held out in a pamphlet recommending it. "Among other impudent impositions it was endeavoured to be shown that the company would produce, in the course of a short time, no less than 10,201,741*l.* 13*s.* 2*d.* in the way of taxes. In the same statement the annual profits, after a certain period, were calculated at 299,000,000*l.*" He thought the scheme one of the greatest bubbles that had ever been imposed on public credulity, and would do nothing to encourage these gambling projects by which men were to be princes or beggars in a moment.²

Gas Light and Coke Company's Act, 1810.

Undismayed by defeat, the promoters began anew in the following year. Their objects were now defined to be the "making of inflammable air for the lighting of the streets of the metropolis, and for procuring coke, oil, tar, pitch, asphaltum, ammoniacal liquor and essential oil from coal, and for other purposes." The Bill, which enabled his Majesty to incorporate a company by charter for these purposes, was opposed on the second reading, but there was no division.³ By special instruction from the House, the Select Committee received power to prevent the creation of any direct or indirect monopoly by providing in the Bill that "all persons who may contract for lighting streets with gas shall exercise all the same privileges and authorities as are intended to be granted to the Gas Light and Coke Company, in relation to the raising the pavement and laying pipes for the purposes aforesaid within the limits of the Act."⁴ With the amendment thus introduced, the measure was again opposed, but unsuccessfully, on the third reading.

¹ 14 Hansard's Debates, June 2, 1809, pp. 860, 861.

² *Ib.* p. 861. Mr. Winsor and the persons associated with him proposed to establish a company with a charter for lighting all the towns of the

United Kingdom and all the British possessions by gas; the capital proposed was a million pounds.

³ 65 Com. Journ. p. 178.

⁴ *Ib.* p. 246.

In Committee in the House of Lords the Bill was very carefully considered and many amendments were introduced. One provided that none of the powers granted under the Act should be exercised until the sum of 100,000*l.* had been subscribed, and that the company should be required to raise within three years their whole capital of 200,000*l.* Another amendment, containing the germ of many modern provisions to the like effect in the interests of shareholders, was "that no dividend shall be made whereby the capital of such company shall be in any degree reduced or impaired;" and the governor, deputy governor and directors were made personally responsible to the proprietors and creditors "for any injury which may arise therefrom." A third amendment, to guard against excessive rates charged for public lighting, enacted that every contract entered into with the company by any parish or parishes, should be "null and void if at any time the price charged for inflammable air used in lighting the parish shall be greater than what at the same time shall be paid for lighting any part of London, Westminster, or Southwark with oil in the usual manner."¹ Another necessary enactment saved all rights of proceeding against the company for a public or private nuisance in respect of their works or the method of furnishing light, or for any injury sustained thereby, "whether such injury shall proceed from the nature of such method of lighting, or the carelessness or want of skill of the persons employed therein." These amendments and many others which showed a thorough grasp of the subject, were agreed to by the Commons; Sir James Graham was instructed to return the measure to their lordships, signifying such assent;² and the first Gas Bill became law on June 9, 1810.³

House of
Lords' Com-
mittee.

No record has been preserved of debates upon the Bill of 1810 in the House of Commons; but in the other House, which had then to consider, for the first time, the principle

Debates in
House of
Lords, 1810.

¹ *Ib.* p. 455.

³ 50 Geo. III. c. 163.

² *Ib.* p. 456.

of such a measure, there was some opposition to it. Lord Lauderdale, for example, upon the second reading, renewed the objections raised elsewhere in the previous Session to proposals which would give this company a complete monopoly, to the detriment of future inventors and of those persons who had already spent much money upon experiments. He also opposed the Bill on the ground of the nuisance which it would create and sanction; but his motion to negative the second reading only commanded 12 votes against 32 "Contents."¹ Another debate arose upon the third reading, but Lord Sheffield and the Duke of Athol, warm supporters of the Bill, were then able to point to the well-considered amendments already noticed, which had removed most of the objections to it. If the plan were to be carried out, it was absolutely necessary that subscribers should be relieved from liability except to the amount of their subscriptions. Such privileges had been granted, with advantage, in the case of other industrial undertakings. As to the alleged monopoly, the promoters were satisfied that their charter should be limited to a term of twenty-one years, and desired none of the exclusive rights objected to in the old charters. England, said Lord Sheffield, owed much of her prosperity to incorporated companies, which were the parents of almost every branch of our foreign commerce. In like manner great public benefit would arise from this Bill. The House showed an enlightened appreciation of the new project, notwithstanding the prejudices which were aroused against it, and the vested interests it affected; and its opponents were not encouraged to call for a division.²

Further
Powers Acts,
1814-16.

In 1814 the company's powers were enlarged without opposition,³ but in 1816 a similar attempt led to a combination of interests and a formidable contest. The proceedings show, too, what could then be done in delaying the progress

¹ 16 Hansard's Debates, March 15, 1810, p. 1038

² 17 *Ib.*, June 2, 1810, p. 872.

³ 54 Geo. III. c. 116.

of private legislation. A petition for the Bill was presented in the House of Commons, February 16. It was considered in the usual way by a Committee, who reported favourably. The Bill was ordered to be brought in, but was not read a first time till March 25. Referred to a Select Committee on April 10, opposing petitions were admitted by special leave of the House at intervals up to June 11. Among these petitions were two from merchants trading to Greenland and Davis's Straits, and one from masters, officers and seamen employed in the Greenland whale fishery, who complained that the new method of lighting from coal would put an end to the demand for oil, and destroy their means of living. Certain oil lamp contractors, lamp manufacturers, and workers in brass and other metals also opposed the Bill; but the most numerous petitioners were road authorities, who now perceived how seriously the laying and relaying of mains and pipes¹ affected their jurisdiction. At this period two gas associations at least had been formed in the metropolis without statutory powers, one owning gas-works in Dorset Street, Salisbury Square; the other, called the Aldgate or East London Gas Light Company. These proprietors also petitioned,² and counsel were allowed to them and to most of the other petitioners. Counsel were also "admitted to be heard in favour of the Bill; and all who came to the Committee were to have voices."³

Proceedings
in House of
Commons,
1816.

The time for the Committee to make their report was enlarged on May 10, and four times subsequently. On each of these occasions the Chairman informed the House

Delay in
Committee.

¹ The first mains systematically laid throughout a city were probably those of the New River Company. They were simply trunks of elm trees left in their rude state on the exterior, the interior being bored out to the required size, which varied from two to ten inches in diameter. This description of mains existed

until the commencement of the present century, when cast-iron pipes were introduced, but at an excessive cost of 18*l.* and 20*l.* per ton. (Hughes's Treatise on Gas Works, 4th ed. p. 233.)

² 71 Com. Journ. pp. 327, 338.

³ *Ib.* p. 320.

Debate on
report.

that "although the Committee had used all due diligence, they were not able to make their report this day, being the time limited by the order of the House." At length, on June 11, the Committee did report in favour of the Bill, and an adverse motion was negatived on a division by 76 to 29 votes.¹ Afterwards the third reading was twice deferred. On June 20 the Bill passed, but only after several attempts to defeat it.² In the course of the two recorded debates,³ Alderman Atkins reproduced the substance of some of the petitions, predicting that gas-works would ruin the hardy race of men who followed the Southern and Greenland whale fisheries, in each of which a million of money and above a hundred ships were engaged, and would throw out of employ ten thousand seamen, with an equal number of rope makers, sail makers, mast makers, and others. He complained, also, of the way in which members interested in the subject had attended the meetings of the Committee, bearing down all opposition by their numbers. Mr. Calvert defended the Committee from this imputation: "He himself had no interest in gas, and should like to hear the hon. Alderman say the same of himself with respect to the Greenland trade." As Lord Sheffield had pointed out in 1809, we then paid large sums to foreigners for tallow and oil as means of lighting, but were now proposing to make light from coal, produced exclusively in this country: a distinct advantage to a British industry. An old opponent of the Bill of 1810, Mr. Giddy, now spoke with less vehemence, as though his views had been tempered by experience. On this occasion he dwelt, and with more reason, on the fact that the Company were practically obtaining privileges in perpetuity. Such powers were wholly unjustifiable: had they been limited to a period of even sixty years, he would not have objected to the measure.

Fear of gas
explosions.

About this period one or two accidents at gas-works led to much fear of explosion. The gasometers, or holders for the

¹ 71 Com. Journ. p. 445.

³ 34 Hansard, pp. 1072, 1280.

² *Ib.* p. 492.

storage of gas, which were planned in populous districts of the metropolis, excited particular alarm, and in 1814 a Committee of the Royal Society was appointed by the President and Council, at the request of the Government, for the purpose of examining into this risk. They recommended that gas-works should be placed at a certain distance from all other buildings, or, if erected near houses, that the reservoirs should be on a much smaller scale than those then existing, and should be "separated by mounds, as is done in the Government powder-mills, or by strong party-walls, sufficient to prevent the explosion of one from causing that of any other."¹ None of these recommendations were adopted, though the Standing Orders of both Houses,² requiring notice to be given to owners and occupiers in the event of gas-works being proposed within 300 yards of their premises, may possibly be due to one of the Royal Society's suggestions.

Committee of
Royal Society,
1814.

In 1822 the attention of Parliament was again directed, by various accidents, to the danger of explosions. Under the special Acts of the London gas companies at this time, the Home Secretary exercised control over their works, with a view to the public interest and safety; and, by direction of Lord Sidmouth (then Home Secretary), Sir William Congreve, who had been appointed inspector under the Acts, reported on the state of these works.³ There were then gas-works,

Sir W.
Congreve's
reports to
Home Secre-
tary, 1822-3.

¹ Parliamentary Paper of 1823 (Commons), 193, p. 5. The only gasometer in London in 1814 was one at Peter Street, Westminster, holding about 14,000 cubic feet of gas. The Committee of the Royal Society estimated that this quantity of gas would produce an explosion equal to that of five barrels of gunpowder, whereas two barrels were the greatest quantity which any dealer was allowed to have within a town. They point out "the injury

which the public might sustain by the attempts of designing and mischievous persons to cut off the supply of gas, or occasion explosions, in order to profit by the darkness and general consternation."

² Standing Order 15, in both Houses.

³ In some works at Whitechapel, Sir William Congreve says: "It will hardly be believed that two large canvas bags of about 15,000 cubic feet each were for some time

established under statutory powers, at seven or eight sites in London; and gas was also supplied by some companies without such authority.¹ Another more elaborate report upon the same subject was presented by Sir William Congreve, in 1823, to Mr. Peel, who had succeeded Viscount Sidmouth as Home Secretary. Among the restrictions then suggested were that gasometers should not contain more than 20,000 cubic feet of gas,² and should be placed forty feet apart, or, if nearer, should be separated by a strong brick traverse, like those in use at the Waltham Abbey Powder Works, and should be similarly traversed if they were within from fifty to a hundred yards of any dwelling-house.³ Sir William Congreve dwelt on the importance of encouraging our distant fisheries by the development of oil-gas lighting, but regretted that only one oil-gas company had been formed in London, at Old Ford,⁴ though it had been adopted in Liverpool, Norwich, Plymouth, and other provincial towns.⁵ An Act for lighting Bristol and Clifton by the same method was obtained in 1823.⁶

Oil gas.

used as gasometers, and that a blacksmith's forge was placed near to one of them."

¹ Several such companies are mentioned in the report.

² In 1884, the South Metropolitan Company built two gasometers at East Greenwich, each to contain five and a half million cubic feet of gas.

³ Commons' Paper of 1823, No. 193, p. 19.

⁴ The company here mentioned were incorporated (1 & 2 Geo. IV. c. 52) under the name of the Whitechapel Gas Light Company. Their district extended from Whitechapel to the four-mile stone on the Ilford and Woodford road, but they only supplied about 6,000 cubic feet of oil gas daily, a limited consumption probably explained by the fact that their charge was at the rate of 5s. per 100 cubic feet, while the charge for coal gas was then 15s. per 1,000. It was

claimed, however, for oil gas that it yielded a light three times as intense as an equal quantity of coal gas, and much purer.

⁵ A portable oil gas company (mentioned by Sir William Congreve, p. 23) proposed to supply detached houses with compressed gas, contained in strong copper vessels, to be attached to a pipe feeding fixed lamps in different parts of the building. This plan, now applied to the lighting of railway carriages, was then thought an economical method of lighting country houses by gas, instead of generating a supply on the spot.

⁶ 4 Geo. IV. c. 102. The attempt was a failure, and by subsequent Acts the company was authorized to make gas from coal, and to drop the name of an oil gas company. In 1853 it was amalgamated with the Bristol Gas Light Company.

As the conclusions come to in these reports were disputed, a Committee of the House of Commons was appointed in 1823 to ascertain whether any sufficient grounds existed for alarm. Among the witnesses examined were Sir Humphrey Davy, then President of the Royal Society; Dr. Hyde Wollaston; Sir William Congreve, who was a member of the Committee and represented the alarmists; and several well-known gas engineers, including Mr. Samuel Clegg and Mr. George Lowe. The companies were represented by counsel. Risks of explosion to gasometers by lightning or by rioters in possession of gas-works were two of the contingencies discussed. They were dismissed by Sir Humphrey Davy and other scientific witnesses as of small practical moment.¹ A public Bill then pending proposed various regulations as to the size of gasometers, their distance from each other, the use of regulating valves, the purity of gas, and many other details.² The Committee were of opinion that the

Commons' Committee on gas light establishments, 1823.

General legislation proposed.

¹ Sir Humphrey says:—"In reading this evidence, I think on mature consideration the chance of danger from rioters, or ill-disposed persons, very small indeed, for preparations for explosion could not be made without great difficulty and considerable danger to themselves." A strike of gas workmen was a source of danger not contemplated in 1823. The risk occurred, however, in December, 1872, and was provided for by the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 3, imposing severe penalties on workmen for wilful and malicious breaches of contract, which would stop, wholly or partially, any public supply of gas or water.

² Two Bills were laid before the House of Commons, one in 1822 (480) "to prevent washings, or other substances arising in the making of gas, being conveyed into any river, brook,

stream, or waters"; the other Bill (428 of Session 1823) "for the regulation of all gas establishments in the metropolis and the vicinity thereof," but providing for the application of the Act to any city or town and its vicinity, by Order in Council. This Bill anticipated the Districting Act of 1860, by fixing boundary lines for the London companies beyond which they were not to supply gas, and within which they were to have "the exclusive privilege of supplying inflammable air or gas made from coal or oil." The limits proposed for this statutory monopoly were to be assigned by schedule, which is not, however, printed. Both these Bills were dropped, and twenty-four years elapsed before any of the public safeguards they suggested were enforced by public legislation.

dangers from gasometers were "not so great as had been supposed." Great improvements, they pointed out, had been made in the apparatus, machinery and management of gas-works since 1814, when the Committee of the Royal Society reported. The risks arising from such works had thus been very much lessened; and further improvements tending to the same result were "being daily made in every department of them." But the Committee vaguely suggested that the Secretary of State should have further powers for enforcing such improvements in gas-works as might be necessary for the public safety.¹

Price of gas.

No legislation followed this inquiry. The Committee had passed over, without notice, the most useful suggestion in the evidence, namely, a limit to the charge for gas. A general clause, regulating prices for public lighting, was contained in the Bill of 1823, prepared, it would seem, at the instance of Sir W. Congreve. Witnesses for the companies thought such a general provision impracticable, as "no two companies could be under the same circumstances."² At this period a common proviso insisted on in every Gas Act was one requiring the company to light the street lamps in their district "with gas of such quality as shall at all times afford a cheaper and better light than could be obtained from oil lamps; and whenever the company shall fail so to do, the power and authority hereby given to them to break up the soil or pavement of roads or streets shall from thenceforth cease and determine." In other words, their powers both for public and private lighting would practically cease. But this proviso as to price and quality applied to public lighting only, and was regarded by the companies as of no practical effect, especially as the maximum price was one very difficult to ascertain, fluctuating,

Proviso as to charge for public lighting.

¹ Commons' Committee on Gas Light Establishments, 1823. Report, pp. 3, 4.

² *Ib.*, evidence of Mr. George Lowe, superintendent of the Chartered Company, p. 82.

as it did, with the price of oil. With private consumers the companies were left to make what terms they chose;¹ and this freedom in fixing rates was defended, inasmuch as, it was said, the stress of competition from oil, wax and tallow lights would always force the companies, in their own interests, to charge as little as possible. Sir W. Congreve, whose faith by this time in oil gas seems to have been shaken, pointed out in vain that the superior advantages of coal gas over all other modes of lighting, really left the public with no alternative than to use it, at nearly any rate which the companies thought fit to impose.² No safeguard, however, was adopted against undue rates; and even the Gas Act specified by the House of Lords in 1827 as a model for future legislation, contained no restrictions whatever upon price or quality.³

Private
consumers.

We may now see what were the main provisions in the first Acts of the first Gas Company. The Act of 1810 provided that if his Majesty, within three years, should think fit to grant a charter of incorporation,⁴ the company should then be able to contract with local authorities or private persons for the lighting of streets and manufactories and private houses, and to sell the coke and residual products under the conditions and restrictions expressed in the charter and Act. An extensive district was assigned to the company, namely, District.

Gas Light
and Coke
Company's
Acts, 1810-19.

¹ In the Bill of 1823, already cited, the interests of private consumers are not thought worthy of mention. For a specified period, existing charges for street lamps were not to be increased. Afterwards they were to be regulated by the Home Secretary, with a proviso for their re-adjustment by the same authority "if, from any war or other unforeseen cause or causes, the price of coals or any other articles used by the companies should rise" so as

to make the existing prices inadequate.

² Report of 1823, p. 84.

³ Macclesfield Gas Act, 7 Geo. IV. c. 8.

⁴ The charter was obtained April 30, 1812; hence the Gas Light and Coke Company was distinguished as the Chartered Company. Sect. 1 of the Act limited the company's powers to a period of 21 years from the date of the charter.

Public
lighting.

cities of London or Westminster, or the borough of Southwark, or any of the liberties or precincts thereof respectively." It was expressly enacted that the company should raise no money on loan, and that their capital should be limited to the share subscriptions of 200,000*l*.¹ Upon application they were bound to furnish any parishes, or parts of parishes, within their limits, "with a sufficient supply of inflammable air for the purposes of lighting" under the condition already mentioned, namely, that the light should be "a stronger and better light, and at a cheaper and lower price, all expenses included," than if these places were "lighted in the usual manner."

Competition
with private
trades for-
bidden.

With a view to prevent injury to private traders, the company might furnish mains, but were forbidden to "sell or furnish any stove or pipe, or pipes, or apparatus or machinery of any description whatever," for conveying gas into buildings. Roads and streets were only to be disturbed with the consent and under the direction of local authorities; and, to guard against the assumption that any monopoly was conferred either by statute or charter, there was an express proviso "that nothing in this Act contained shall have the effect of depriving any person or persons of any right which he or they at present possess, or of interfering with any right which he or they may hereafter acquire, of lighting streets or houses with gas, or in any other manner."² In fact, private persons and companies without statutory powers, as well as companies incorporated by Act, did supply gas, after 1810, within the district then assigned to the Gas Light and Coke Company. A short term had been fixed, in 1810, for raising the company's capital. In 1814³ this term was extended for a further period of three years, inasmuch as "from the nature of the works, and the many obstacles and difficulties which the company have had to encounter, their progress has been very much retarded;"⁴ but the powers

Grant of
monopoly
expressly
excluded.

Act of 1814.

¹ 50 Geo. III. c. 163, s. 23.

² *Ib.*, s. 36.

³ 54 Geo. III. c. 116.

⁴ *Ib.*, preamble. Gas companies

granted to the company were limited to a period of eighteen years from April 30, 1815. In 1816 Parliament was again Act of 1816. applied to, and, after the opposition already mentioned, allowed the company to continue as a corporation thirty years after the expiration of their charter, and to raise the further sum of 200,000*l*. They were on no account and upon no pretence whatever to employ workmen to fit-up any dwelling-houses or other places with gas; nor could they themselves manufacture or sell any of the materials requisite for such fittings, except stop-cocks and governors. They Private traders again protected. were to transmit to the Home Secretary such reports as he might from time to time require, showing the state of their affairs, and of their works.¹ Their stations and works were to be at all times open to inspection by persons appointed by the Secretary of State, who might impose upon them such regulations as he might consider necessary for the public advantage, and for "assisting and advancing the benefits to be derived from an active and efficient police."²

In 1819³ important concessions were obtained from Par- Act of 1819.liament, which abolished the limitation upon the company's powers as to time,⁴ and constituted them a continuing body corporate. Thus, the opportunity of making fresh terms in the public interests, or of transferring the undertaking to the municipalities, was lost. The plea for this change in the company's status was, that they had established

were not at the outset a commercial success. One of the London companies was in treaty for the sale of its undertaking for about one-twentieth part of the original cost; a difference of a comparatively insignificant sum alone preventing the sale (Hughes, p. 24). But according to Sir W. Congreve's report, the metropolitan gas companies in 1823 were very prosperous. The London Gas Light and Coke Company were then paying eight per cent. and their shares were at 19*l*. premium; the City

of London Company were paying seven per cent. and their shares were at 36*l*. premium; the South London Company were paying seven and a half per cent. and their shares were at 38*l*. premium. The Imperial had not then commenced to supply consumers, though their works at Hackney and St. Pancras were in progress.

¹ 56 Geo. III. c. 87, s. 11.

² *Ib.*, s. 12.

³ 59 Geo. III. c. 20.

⁴ *Ib.*, s. 7.

Company's
powers made
perpetual.

large and expensive works in several parts of the metropolis; that, in order to afford greater security to the public, and give additional stability to the works, the company had contracted to buy the fee-simple of land in various parts of London; and that they would be better able to supply the increasing demand for gas if their powers were made perpetual.¹ Parliament adopted this view and authorized them to raise a further sum of 200,000*l*.

London, &c.
Gas Bill, 1819.

There is no record of any opposition in either House of Parliament to this perpetuation of powers. Such silent acquiescence in so great a concession to the Chartered Company is the more remarkable, because in the same Session this company vigorously opposed an application for statutory powers by promoters of a "Bill for more effectually lighting the metropolis and its environs with gas." Upon a petition against this Bill by the Gas Light and Coke Company counsel were allowed to them, and "voices" ordered in the usual manner.² A petition from the Ratcliff Company³ also raised the question of competition. Notwithstanding this opposition, and that of various local authorities, a Committee of the House of Commons reported in favour of the Bill. Upon the third reading, however, after sharp debate, the Bill was negatived by a large majority, 134 to 31, although the promoters had shown their good faith and resources by raising 120,000*l*., four-fifths of their proposed capital, before applying to Parliament.⁴

Opposed on
ground of
competition.

Bill defeated.

Gas in pro-
vincial towns.

Six years passed after the Gas Light and Coke Company obtained their Act before statutory powers were

¹ 59 Geo. III. c. 20, preamble.

² 74 Com. Journ. p. 276.

³ This company, absorbed by the Commercial in 1875, did not obtain statutory powers until 1823. (3 & 4 Geo. IV. c. 98.)

⁴ 40 Hansard, p. 452, Com. Deb. May 17, 1819. The prejudice and hostility of the Chartered Company against this new rival were com-

mented upon in debate. One member, however, rested his opposition to the Bill upon wider grounds. He said that both "fire and water companies . . . were a nuisance to the public. In his opinion, all the competition or rivalry which they produced was the rivalry of who should pull the pavement most violently to pieces."

applied for 'in any provincial town.¹ Exeter was the first place lighted under statute, in 1816. Glasgow followed in the next year; in 1818, Edinburgh, Liverpool, Leeds, Sheffield, Oxford, Nottingham, Worcester, Bath and Brighton; in 1819, Bristol, Birmingham and Carlisle. From these beginnings the new mode of lighting spread rapidly over the country. Down to 1885, more than one thousand Gas Bills had passed the Legislature,² and of these about sixty apply to the metropolis alone.

Gas legisla-
tion to 1885.

Public legislation upon the supply of gas begins with 1847, when the clauses usually contained in Gas Bills were embodied in one of the Consolidation Acts of that year.³ Private Bill legislation in respect of gas, as of railways, was greatly facilitated and improved by this change. Henceforth, the provisions which, according to the experience of Committees, of the Board of Trade, and the officials of the two Houses, were necessary for regulating public and private lighting, might be applied to each newly-incorporated company by reference; and the result was, that special Gas Acts which in 1846 sometimes comprised over 200 clauses⁴ were, after the legislation of 1847, contained within forty.⁵ Among its chief provisions the Act regulated the breaking-up of streets and their re-instatement, and provided against the fouling of water by gas. It limited profits in any one year to ten per cent., unless a different rate were prescribed

Gas Works
Clauses Act,
1847.

Dividends
limited to ten
per cent.

¹ Probably, as in parts of London, gas was supplied without statutory powers, the pipes being laid under the streets by agreement with the local authorities. That, in the absence of statute, no such agreement could render legal a nuisance arising from the breaking-up of streets was a point established in *Att.-Gen v. Sheffield Gas Consumers' Co.*, 3 De Gex, M. & G. 309. A company acting without Parliamentary powers is liable to indictment for obstructing the roadway by opening it.

² These include amending Acts. The figures are based, in part, upon the classified Indices to the Local and Private Acts passed between 1801 and 1877; a work of great value, published by the two Houses, and now out of print.

³ 10 & 11 Vict. c. 15.

⁴ See South Metropolitan and Equitable Acts of 1842.

⁵ Southampton Gas Act, 1848, incorporating Companies Clauses and Gas Works Clauses Acts.

by the special Act, and directed that excess profits should be appropriated to a reserve fund of limited amount to make up any deficiency in past dividends, or meet any extraordinary claims.¹ If the profits exceeded the prescribed amount, a rateable reduction was to be made in the price of gas; and means were provided for investigating the company's accounts with a view to ensure to consumers the benefit of this enactment.

Gas Works
Clauses Act,
1871.

Compulsory
supply by
companies.

Quality and
purity.

Accounts.

It was optional with companies to incorporate with their special Act the whole or any part of the public statute of 1847. An amending statute, however, in 1871, applied, without exception, to every gas undertaking since authorized; and as the two statutes are to be read as one Act, both have now a compulsory application, though they may be varied by the terms of the special Act.² This legislation of 1871 imposed upon gas companies various obligations in the interests of consumers. Upon being required by owners or occupiers of premises situate within twenty-five yards from any main, companies were required to furnish, under certain conditions, a sufficient supply to such premises.³ To ensure the illuminating power and purity of the gas, a testing place and apparatus must be provided by the company; and the light they supply, to be tested there by examiners appointed by the local authority, must equal in intensity that produced by the specified number of sperm candles of six in the pound.⁴ There are various other provisions to secure the proper testing of the gas, whether at the instance of local authorities or of consumers. Regulations are made for public lighting; and annual statements of accounts in a prescribed form must be forwarded to the local

¹ 10 & 11 Vict. c. 15, ss. 30, 31.

² 34 & 35 Vict. c. 41, s. 1. When an application is made for new powers by an existing company, the special Act usually provides that the Gas Works Clauses Acts "shall apply to the entire undertaking of the

company, as if the same were authorized by this Act."

³ 34 & 35 Vict. c. 41, s. 11.

⁴ *Ib.*, ss. 12, 28 and 29. The usual minimum standard now (1885) allowed in Gas Acts is a light equal to fourteen sperm candles.

authority of every district within the limits of the special Act.

It was soon found necessary to regulate by one uniform standard the measurement used in sales of gas. In 1859, therefore, Parliament enacted that the only legal standard or unit should be the cubic foot as defined by the statute,¹ and provided that models of measures upon this basis should be made and verified under the direction of the Treasury, and should be made generally accessible for reference, and also that meters should be tested and stamped. The only other public Acts here requiring notice are two passed in 1870 and 1873, giving facilities to persons or public bodies desirous of obtaining powers for the construction of gas-works. By these statutes, Provisional Orders were allowed, under certain conditions, to take the place of private bills.²

Sale of Gas
Acts, 1859-60
(Standard
measure-
ment).

Gas and
Water Works
Facilities
Acts, 1870-3.

We have seen that, in 1847, Parliament laid down the general principle that gas dividends should not exceed ten per cent. As in other like cases, this enactment was based upon the conclusions come to before that period by Private Bill Committees, whose experience, gained in the course of many and varied inquiries concerning all parts of the United Kingdom, forms a most valuable contribution to the common stock of knowledge in Parliament, and a safe guide to public legislation. Dividends by gas companies seem to have been first restricted in the Session of 1841.³ When the South Metropolitan Company was incorporated in 1842, a limitation to this effect was also inserted in their Act, with provisions, now common, for establishing a contingent or reserve fund to make up deficiencies in the amount of

First restric-
tion on gas
dividends.

¹ "The cubic foot containing 62.321 pounds avoirdupois weight of distilled or rain water weighed in air at the temperature of 62 degrees of Fahrenheit's thermometer, the barometer being at 30 inches" (22 & 23 Vict. c. 66, s. 2). See also 23 & 24 Vict. c. 146; and 41 & 42 Vict. c.

49, ss. 33, 66.

² 33 & 34 Vict. c. 70; 36 & 37 Vict. c. 89. These Acts do not apply to the metropolis. See *post*, chapter on Provisional Orders.

³ See Birkenhead Gas Act, 1841, which limits profits by the undertakers to ten per cent.

Rateable reduction in price of gas, according to company's profits.

divisible profits; and for a reduction in the price of gas if the profits, shown by the company's verified accounts, amounted to more than ten per cent.¹ There are similar provisions in the Act of the same year incorporating the Equitable Company. Under certain circumstances the Middlesex justices were authorized in this case to appoint an accountant to examine the company's accounts, and if its profits were found to exceed the statutory maximum, such rateable reduction was to be made in the price of gas "as the company may deem prudent, or as in the judgment of the said justices shall be proper."² As an assertion of principle, this enactment was satisfactory enough; the mode of carrying it into effect left much to be desired.

Limit on profits evaded by companies.

Notwithstanding this limitation of dividend in and before 1847,³ and by special Acts since that period prescribing still lower rates, it was found that gas companies evaded the intentions of Parliament in two ways: by converting loans into share capital, a power given to them by the Companies Clauses Acts,⁴ and by issuing new capital, which was allotted *pro rata* among the shareholders at par, although worth a considerable premium. In either case the shareholders, even if their dividends fell, received a direct benefit by way of bonus upon the capital thus created, whether its expenditure was or was not necessary or judicious;⁵ but it was generally found possible to maintain the maximum rate of dividend, so that

¹ 5 Vict. (sess. 2), c. 79, ss. 114–118.

² 5 & 6 Vict. c. 36, ss. 117 *et seq.*

³ When a gas company seeks incorporation, its dividends are usually arranged under three heads, and upon the following scale:—1. Ten per cent. upon the original capital. 2. Five per cent. upon capitalized profits taken out of revenue, and used for extensions of works. 3. Seven per cent. upon new capital. *Law of Gas and Water*, by W. H. Michael, Q.C., and J. Shirees Will, Q.C.; 3rd ed. 1884, by M. J. Michael; Int., p. 58.

⁴ 8 Vict. c. 16, s. 58; 26 & 27 Vict. c. 118, s. 17.

⁵ In the Commercial Gas Act, 1875, the company, after raising 200,000*l.*, were required, before making fresh loans or issuing further share capital, to prove to the satisfaction of the Board of Trade that the money thus proposed to be raised was necessary for the purposes of the company during the next three years; and the Metropolitan Board might be heard to oppose such application. 38 & 39 Vict. c. 200, s. 19.

shareholders reaped a double benefit, from share premiums as well as from high percentages upon fresh investments. In short, the same process was adopted as has been already described in the case of railway shares and stock.¹ Parliament, however, without legislation, but by means of its rules and orders, put a stop to this method of swelling the gains of gas shareholders.

A common form clause is now required in all gas Bills which propose the creation of new loan capital. It was first inserted in the Bills of 1873, and provided that companies should "not have power to convert borrowed money into capital other than preference or ordinary stock, with a maximum dividend of five per centum per annum."²

Restriction on loans converted into capital.

A still more important restriction on the issue of new capital was introduced by what are known as auction clauses. This general restriction was first enforced in the Ashton Gas Act of 1847. It was not until 1853 that a Committee insisted on similar provisions.³ All new shares were to be offered by auction in these two cases. In the Gainsborough Act of 1856, only half of them were to be so offered. In 1857, auction clauses were made compulsory at Sunderland and Glasgow, but were left to the discretion of companies at Shrewsbury, Stockton and Maidstone. From that time they became more common in Gas Bills, but Committees differed in their view whether all or only part of the new shares should be sold by auction, and also whether such sale should be made compulsory or left optional. It is an apt illustration of metropolitan inertness in matters affecting municipal interests that, although during this period the London Gas

Auction clauses.

Provincial towns obtain this benefit thirty years in advance of London.

¹ *Ante*, pp. 129 *et seq.*

² Bristol United Gas Company's Act, 1873, s. 15; Bournemouth Gas and Water Act, 1873, s. 28; Alliance and Dublin Gas Act, 1874, s. 36. In 1872 Parliament expressly prohibited the Gas Light and Coke Company from converting borrowed

money into capital. (35 Vict. c. 23, s. 13.)

³ In the Nottingham Act of 1853. All the cases will be found collected at p. 20 of the useful volume of Gas and Water Precedents, by Mr. G. W. Stevenson, C.E., F.G.S.

Companies were frequently in Parliament for an increase of capital, thirty years passed before the inhabitants of London enjoyed any similar protection. In one form or other, since 1847, more than fifty provincial towns had obtained this safeguard through the medium of Private Bill Committees. But it was not until 1876 that auction clauses were inserted in any Metropolitan Gas Act.

In 1875 the Metropolitan Board of Works, opposing the gas schemes of that Session, strongly represented the injustice to gas consumers of the bonus system in the issue of capital; a system which left to gas shareholders no interest in the proper and economical management of their affairs, but on the contrary gave them a direct benefit from unnecessary extensions and outlay.¹ Accordingly, in the following session, Committees introduced into two Metropolitan Acts provisions requiring that all new shares or stock should be offered for sale by public auction or by tender. A reserved price was to be fixed, not less than the nominal amount, and was to be communicated to the Board of Trade. Notice of any intended sale was to be given to the secretary of the London Stock Exchange. Any sums thus arising from premiums were not to be "considered as profits of the company," but to be "expended in extending or improving the works of the company, or in paying off money borrowed or owing on mortgage," and were not to rank as capital entitled to dividend."² In 1877, the propriety of the step thus taken by Committees was tardily recognized by Parliament. Both Houses, during that session, adopted Standing Orders requiring that "in every Bill by which an existing gas company is authorized to raise additional capital, provision shall be made for the offer of such

Sale of new gas shares or stock to highest bidder.

Sum received for premiums not to rank as dividend-bearing capital.

¹ Gas Light and Coke Company's Bill, 1875, petition of Metropolitan Board, par. 18.

² Gas Light and Coke Company's Act, 1876, ss. 13-16; South Metropolitan Gas Act, 1876, ss. 13-16.

Provincial Gas Acts now usually contain similar conditions and provide for publicity by advertisement, as well as notice to local authorities. Sandbach Gas Act, 1884, ss. 28-32.

capital by public auction or tender, at the best price which can be obtained, unless the Committee on the Bill shall report that such provision ought not to be required, with the reasons on which their opinion is founded.”¹

Under these new conditions gas shareholders ceased to derive any direct benefit from fresh issues of capital. Secure of their maximum dividends, they would also have ceased to feel much interest in the effective management of the undertaking, but Parliament now awakened a lively interest among them by providing that they might receive more than the maximum ten per cent. of dividends if they reduced the price of gas; or less if the price were raised. To the Metropolitan Board belongs the credit of having urged this reform.² In their petitions of 1875, already mentioned, they pointed out, though very briefly, the advantages of so regulating gas dividends that these should rise or fall with the price of gas. In the same Session, they procured the insertion of a clause based on this system in a Bill promoted by the Commercial Company. This clause fixed a standard price of 3s. 9d. per 1,000 cubic feet, allowing the company to increase or diminish it, subject to a decrease or increase in dividend; so that “for every penny or part of a penny charged in excess or in diminution of such standard price in any year, the standard rates of dividend as defined by this Act shall for such year be reduced or increased by five shillings in the hundred pounds per annum.”³

Sliding scale
of dividends.

Metropolitan
Board's pe-
titions, 1875.

Commercial
Gas Act, 1875.

In the following Session, Private Bill Committees again acted upon this view. They fixed the standard price of common

¹ Standing Orders, H. C., 1885, No. 188 A.; H. L., 140 A.

² There was, however, an early precedent for a sliding scale in the Sheffield Gas Act, 1855; and in 1857-60, when the “districting” of the London gas companies was under discussion, delegates of the vestries proposed a similar provision in the Metropolis Gas Regulation Bill then

brought forward, but it was omitted from the Act of 1860. Mr. Livesey, C.E., in 1874, also suggested a plan for “making consumers, in a sense, partners in gas companies,” so that both should share, by lower prices and increased dividends, in the results of improved working.

³ 38 & 39 Vict. c. 200, s. 53.

Commons' Standing Order.

gas¹ supplied by the Gas Light and Coke Company at 3s. 9d. per 1,000 cubic feet, with a similar proviso² to that adopted in 1875. A rider to the Standing Orders of the House of Commons already quoted, and also passed in 1877, leaves it in the discretion of Committees to insert the sliding scale in all Gas Bills, or in the words of the Standing Order, "so to regulate the price of the gas to be charged to consumers that any reduction of an authorized standard price shall entitle the company to make a proportionate increase of the authorized dividend, and that any increase above the standard price shall involve a proportionate decrease of dividend."³ The House of Lords have not thought it necessary to instruct Committees that they are at liberty to adopt the sliding scale.

"Districting" in the metropolis.

Before the year 1860, the statutory powers of the thirteen London companies then existing enabled them to supply gas in many of the same districts, the result being a considerable waste of capital and unnecessary opening and re-opening of the public streets. With a view, therefore, to economy and concentration of supply, the companies agreed that each should confine its service to a separate district, Parliament sanctioning this arrangement, and at the same time applying uniform regulations to all the metropolitan companies.⁴ To the Home Secretary was reserved the power, given under the old Acts, of appointing an inspector, but his duty now was to investigate complaints as to the quantity or quality of gas. If the provisions of the Act were broken or not complied with, or if a gas company were "acting in a manner unauthorized by law," the Home Secretary might direct the Attorney-

Metropolis Gas Act, 1860.

¹ There was a corresponding provision as to the company's supply of canal gas.

² Sect. 19. See also South Metropolitan Company's Act of 1876, s. 21. The standard price there fixed was 3s. 6d.

³ Standing Order, H. C., 188 A.

⁴ Metropolis Gas Act, 1860; 23 & 24 Vict. c. 125. See also Amendment

Act, 24 & 25 Vict. c. 79. Four companies south of the Thames, the Phoenix, London, South Metropolitan and Surrey Consumers', "districted" in 1851 without authority from Parliament, and soon raised their charges. Similar proposals by the northern companies led to prolonged inquiries in the House of Commons, in 1858-9 and 1860, be-

General to take proceedings.¹ A standard was fixed for illuminating power and purity, and this standard was to be maintained under penalties. Local authorities were required to appoint examiners. None of the thirteen companies named in the Act were allowed to increase the charge for their gas beyond four shillings and sixpence per thousand feet, unless under special circumstances, and then only after arbitration at the instance of the local authorities in their respective districts, the highest price they could impose under any circumstances being five shillings and sixpence.² The City of London Gas Act, 1868, went further in the same direction. It authorized the Board of Trade, on the application of a gas company or of the Metropolitan Board of Works, to appoint Commissioners for revising the existing scale of illuminating power and price; and during the high prices of coal in 1873-4 this power was exercised in favour of the Gas Light and Coke and Imperial Companies. The Commissioners sat in two successive years, in committee rooms of the House of Lords, obtained on disputed points of law the opinion of the law officers of the Crown, heard and investigated the conflicting allegations of the public body and the companies, and not only decided the questions then at issue, but by the information accumulated in their reports, facilitated the legislation of 1875.³ Under the powers of the same Act the Board of Trade appointed three "Gas Referees," whose business it was, after examining the gas works and the processes of manufacture, to prescribe and

Maximum
price in 1860.

City of Lon-
don Gas Act,
1868.

Gas Commis-
sioners.

Gas Referees.

fore Committees presided over by Mr. Mowbray, Mr. Byng (afterwards Lord Enfield), and Mr. Sotherton-Estcourt. The Bill considered by these Committees, and passed after great modifications in 1860, was introduced by Sir John Shelley, Mr. Byng, Mr. Locke and Mr. Ayrton.

¹ 23 & 24 Vict. c. 125, ss. 7-12 and 45.

² *Ib.* s. 40.

³ *Ante*, p. 227. The Gas Commissioners were Mr. (afterwards Sir F. S.) Reilly, Professor Odling, and Mr. W. P. Pattison. Mr. E. Round, of the Parliamentary bar, was associated with the law officers of the Crown in the references made to them. See also Imperial Gas Act, 1869, ss. 25-36 (as to commissioners), and ss. 44-66 (as to referees and examiners).

certify the mode to be adopted for testing and recording the illuminating power and purity, and also for ascertaining the quantity consumed by public lamps. The Metropolitan Board of Works were also required to appoint gas examiners who should each day test, at specified testing-places, the illuminating power and purity.

Gas Exam-
iners.

Gas amal-
gamations.

The same process of amalgamation which has been described among railway companies has extended to gas undertakings throughout the kingdom; and, when accompanied by proper safeguards, has on the whole proved expedient and beneficial, through the reduction thereby effected in establishment charges, and the concentration in the hands of one body of conflicting rights over the surface of roads and streets. This gradual union of interests has been nowhere so remarkable as in London, and it was nowhere so necessary.

In the
metropolis.

Thus, the Commercial Company, incorporated in 1847,¹ absorbed three years afterwards the Poplar,² in 1852 the British,³ and in 1875 the Ratcliff Companies.⁴ The Deptford Company was established in 1852,⁵ and transferred in 1855⁶ to a younger company, the Surrey Consumers'. The oldest of the London companies, the Chartered, has also proved the most vigorous. In 1868, certain companies were authorized to settle among themselves, or any of them, a scheme of amalgamation, "framed with a view to the reduction of the expenditure of the companies," and if approved by the Board of Trade and confirmed by Order in Council, such amalgamation was to have full effect, and be as binding as though enacted by Parliament.⁷ Under the provisions of this statute, the Gas Light and Coke Company acquired, by Order in Council, in 1870, the undertakings of the City of London Company, dating from 1817, and the Great Central, which was established in 1851. In the same year it absorbed by statute⁸ the

¹ 10 & 11 Vict. c. 53.

² 13 & 14 Vict. c. 82.

³ 15 & 16 Vict. c. 155.

⁴ 38 & 39 Vict. c. 200.

⁵ 15 & 16 Vict. c. 42.

⁶ 18 & 19 Vict. c. 186.

⁷ City of London Gas Act, 1868
(31 & 32 Vict. c. 125, ss. 18 *et seq.*).

⁸ 33 & 34 Vict. c. 121.

Victoria Docks Gas Company, and in 1871¹ the Equitable, which had a lifetime of thirty years. It has also acquired the undertakings of the Western, a limited company; the Imperial, incorporated in 1821; the Independent; and lastly, in 1883, under an Order in Council, the London, which was established in 1844. By these successive amalgamations the Gas Light and Coke Company, whose capital of 200,000*l.* aroused so much apprehension in 1810, now possesses an authorized stock and share capital of 9,200,000*l.*, with a loan capital of 2,670,000*l.*, and practically has but one rival, the Commercial, north of the Thames. In like manner, the South Metropolitan Company, incorporated in 1842,² has absorbed the Surrey Consumers', with the South London and the Phoenix, which obtained statutory powers in 1821 and 1825,³ and now lights almost the whole of the metropolitan area south of the Thames, possessing an authorized stock and share capital of 2,680,000*l.*⁴ Within the period under notice, therefore, fourteen gas companies in London have disappeared, and only three remain.

Any serious rivalry between electricity and coal gas as a general means of lighting has yet to be established.⁵ Warned, however, by the past, Parliament at the earliest opportunity took effectual means of guarding against any fresh monopoly.

Lighting by
electricity.

¹ 34 & 35 Vict. c. 75.

² 5 & 6 Vict. c. 79. They were originally constituted by deed of settlement in 1834.

³ 1 & 2 Geo. IV. c. 51; 5 Geo. IV. c. 78.

⁴ See Commons' Return 202, Sess. 1884, p. 42. In 1883, the shareholders of the Chartered and the South Metropolitan Companies approved of terms of amalgamation, and virtually the whole metropolis would then have been supplied by one association. The Board of Trade, however, objected to the amalgamation, and it was not proceeded with.

⁵ Gas companies have long been relieved from the early restrictions on manufacture (*ante*, 218-19), and now derive revenue from the supply of gas for heat and motive power as well as of light. They also possess an enormous advantage in their residual products, the annual value of which in England was estimated by Dr. Siemens, in 1882, to be as follows: — Colouring matter, 3,350,000*l.*; sulphate of ammonia, 1,947,000*l.*; pitch, 365,000*l.*; creosote, 268,000*l.*; crude carbolic acid, 100,000*l.*; coke, 2,400,000*l.*; total, 8,370,000*l.*

Commons' Committee,
1879.

Gas companies as
distributors of
electricity.

Local authorities and
electric lighting.

When, in 1879, several electric lighting Bills were promoted by companies who wished to appropriate the new system, and by local authorities who desired to prevent such appropriation, the House of Commons interposed and appointed a Committee of investigation, over which Sir Lyon Playfair presided. This Committee reported that in their opinion gas companies "have no special claim to be considered as the future distributors of electric light," for they "possess no monopoly of lighting public streets or private houses beyond that which is given to them by their power of laying pipes in streets,"¹ and "electric light committed to their care might have a slow development. Besides, though gas companies are likely to benefit by the supply of gas to gas engines, which are well suited as machines for producing electric light, the general processes of gas manufacture and supply are quite unlike those needed for the production of electricity as a motor or illuminant."²

In the opinion of the Committee, local authorities should have ample powers to lay wires for street lighting, or to facilitate experiments with this object by companies or individuals; and streets should not be broken up without their consent, and without "compensating advantages" to be derived by the public in return for any grant of powers of this nature. In 1879, the Committee appear to have thought that the time had hardly arrived when the progress of invention made it possible to transmit electricity from a common centre as an economic source of power and light for manufacturing and domestic purposes. Meanwhile, "it might be expedient to give the municipal authority a preference during a limited period to control the distribution and use of

¹ But in practice this qualified monopoly is one most difficult to upset. Parliament has repeatedly refused to allow even municipal corporations to supply gas in competition with existing gas companies, and has always stipulated

that if corporations want such a power they must buy the gas-works. Committee on Electric Lighting Bill, 1882; evidence of Sir Joseph Heron, p. 37.

² Report of Commons' Committee on Electric Lighting, 1879.

the electric light, and failing their acceptance of such preference, that any monopoly given to a private company should be restricted to the short period required to remunerate them for the undertaking, with a reversionary right in the municipal authority to purchase the plant and machinery on easy terms."

In the interval between the report of this Committee and any general legislation, several special Acts passed sanctioning street lighting by electricity. None of these were obtained by private companies. Parliament, in the spirit of the recommendations just quoted, granted no powers save to local authorities, and in their case chiefly with a view to experiments, for periods limited to five years, and in all cases for public lighting only.¹ Nine municipalities obtained these powers: the Corporations of Leicester,² Liverpool,³ Blackpool,⁴ and Over Darwen⁵ in 1879; Huddersfield,⁶ Hull,⁷ Lancaster,⁸ and Oldham⁹ in 1880; and Irvine¹⁰ in 1881. Stimulated by these examples, and by what appeared to be the encouraging results of recent experiments and dis-

Electric
Lighting
Acts obtained
by municipa-
lities, 1879-81.

¹ But this object covered extensive powers. For example: The Blackpool Improvement Act, 1879 (s. 121), authorized the corporation to produce and supply electricity for purposes of light, heat and motive power to street lamps and "places of public resort," the latter being defined as "any premises belonging to or used by the corporation, whether as the municipal or as the sanitary authority, and any place of public worship, railway station, public garden, theatre, concert-room, pier, jetty, or public slaughter-house."

² Leicester (Further Powers to Corporation) Act, 1879 (42 & 43 Vict. c. 200).

³ Liverpool Corporation Electric Lighting Act, 1879 (42 & 43 Vict. c. 213). This was the first application for electric lighting powers by

a municipality. It was an experimental Act; the amount to be raised was 50,000*l.*, for street lamps, the lighting of public buildings, and private lighting.

⁴ Blackpool Improvement Act, 1879 (42 & 43 Vict. c. 199), s. 121.

⁵ Over Darwen Improvement Act, 1879 (42 & 43 Vict. c. 202).

⁶ Huddersfield Improvement Act, 1880 (43 & 44 Vict. c. 99).

⁷ Hull (Electric Lighting by Corporation) Act, 1880 (43 & 44 Vict. c. 125).

⁸ Lancaster (Transfer of Gas Company's Undertaking) Act, 1880 (43 & 44 Vict. c. 77).

⁹ Oldham Improvement Act, 1880 (43 & 44 Vict. c. 147).

¹⁰ Irvine Improvement Act, 1881 (44 & 45 Vict. c. 71).

Private Bills
of 1882.

Commons'
Committee on
Electric
Lighting Bill,
1882.

Interests
affected.

Electric
lighting
companies.

coveries,¹ nearly thirty Bills were promoted in 1882 by gas companies and municipalities, or by electric lighting companies, most of which proposed to establish works all over the kingdom.² Early in the Session, however, a general measure to regulate electric lighting was introduced by the Board of Trade, and it was intimated that, pending the consideration of this measure, no fresh powers would be granted either to companies or to local authorities. In order that the whole subject, and the new conditions it involved, should receive careful consideration, the House of Commons referred the Bill to a Committee of fifteen members,³ providing that all interests affected should be heard by counsel. Meanwhile most of the private applications for electric lighting powers had been withdrawn, but eight Bills, by which authority was still sought for this purpose, were also referred to the Committee.⁴

Inquiry disclosed a singular medley of interests. All parties recognized that private legislation must be postponed till 1883, and must then be based upon the public Bill. Attempts were therefore made so to mould it as to suit the views of the various petitioners. The new electric lighting companies acquiesced, on the whole, in the scheme of the measure, but wished to modify some of its terms, particularly those governing the sale of their works and plant to local

¹ See evidence of Sir Frederick Bramwell, Dr. Siemens and Mr. Spottiswoode, P.R.S., before Electric Lighting Committee, 1882 (*Minutes of Evidence*, pp. 147, 161, 171, 183), as to the progress in "making electricity into a practical light—the incandescent light," and in getting rid of the difficulty of subdivision, thus rendering the light applicable for domestic purposes.

² *Ib.*; Evidence of Sir T. H. Farrer, pp. 3, 4.

³ As the subject for report was a departmental Bill, conferring large

powers on the Board of Trade, a non-official member, Mr. Edward Stanhope, acted as Chairman. Mr. Chamberlain, the President of the Board, however, served on the Committee, and ably represented the view taken by the Board as to public interests.

⁴ Six of these were promoted by private companies, and two by corporations, Aberdeen and Dundee. The whole of these were afterwards withdrawn except the Dundee Bill, from which the electric lighting powers were struck out.

authorities, and the period of compulsory sale. Gas companies, finding that they would not be allowed to furnish electricity as a supplement to gas, or not caring to undertake this new business upon the conditions laid down, asked that, if electric lighting were sanctioned within a gas area, they should at least be relieved of the obligation imposed upon them in 1871 to supply street lamps and private consumers within a certain distance of their mains.¹ Conflicting interests among three sets of local authorities had to be considered and reconciled. First came local authorities whose districts were lit by gas companies, and who resisted all claims to establish a new monopoly, or to acquire new powers over their streets, unless with their full consent, and upon terms advantageous to their communities. Then there were municipalities, distinguished as major authorities, who lit outside districts as well as their own;² and another set, consisting of minor authorities, who took this supply, but stood upon their right to reject it in favour of a new illuminant, if it answered their purpose to do so. The major authorities made a double claim to consideration: first, as guardians within their own boundaries of streets and roads over which new lighting powers conferred on strangers would take effect; secondly, because they had invested large sums upon security of the rates as well as of the gas-rents, were entitled to protection for these vested interests,³ and were

Gas compa-
nies.

"Major" and
"minor"
local authori-
ties.

¹ Gas Works Clauses Act, 1871 (34 & 35 Vict. c. 41), ss. 11, 24. By these sections gas companies are bound, under certain conditions, to supply private consumers whose houses are situated within 25 yards, and street lamps within 50 yards, of the mains. *Ante*, p. 222.

² Manchester is one of several municipalities in this category. It supplies gas to twenty-four townships and districts outside its boundaries, charging a differential rate of 3s. 2d. against 2s. 8d., the price

within the city. Sir Joseph Heron, town-clerk of Manchester, stated to the Committee of 1882 that, out of the profits of gas making, the Corporation had for some years expended on public improvements about 50,000*l.* a-year (pp. 38, 43). Though the out-townships do not benefit by this expenditure, they seem to be supplied at rates lower than could be charged for gas of their own manufacture.

³ Acting upon an extreme view of vested interests, the Dundee Bill

also under a like compulsion with the gas companies (by the operation of the Act of 1871) to supply consumers and street lamps in outside districts, even if such supply ceased to be remunerative through the adoption of any rival system. The minor authorities replied that major authorities beyond their own boundaries were simply gas companies. In out-townships they could have no better claim than private traders enjoyed to disturb streets for the purpose of supplying any new illuminant; they had no preferential right to furnish such illuminant, founded upon their existing powers, for in many cases these powers were taken over from gas companies; and as lineal successors to private traders major authorities must be content to accept all the incidents of trading, one of which is the freedom of customers to deal elsewhere if they choose. This view, as may be supposed, was taken by the Committee.

Electric
Lighting Act,
1882.

As amended by the Select Committee and afterwards by the House of Lords, the Act of 1882¹ makes important changes affecting private Bill practice, and gives to the Board of Trade larger powers than have hitherto been conferred on any public department.

According to the explanation of its framers, the first object of the Act is to avoid interference with any private supply of power or light, so long as no rights are sought to break up roads or streets.² With this object, the ordinary law is left unaltered, and persons or companies may establish works and, by consent, supply their neighbours, or the whole of one side of a street or continuous streets, provided they do not touch roadways or footpaths, or inflict a private injury,

of 1882 proposed not only that the Gas Commissioners should be authorized to light the town by electricity, but that everybody else should be prohibited from supplying electric light or power within their limits, even if the streets were not broken up. Ev. of Sir T. H. Farrer and

Mr. John Leng, pp. 3, 135.

¹ 45 & 46 Vict. c. 56. It did not receive the Royal Assent till August 18th.

² Evidence of Sir T. H. Farrer before Committee of 1882, p. 5; and Committee on Electric Lighting Provisional Orders Bills, 1883, p. 1.

or commit a nuisance. Next, authorized promoters are enabled to open streets, and local authorities to make use of the rates, directly or as security for loans, for the purpose of supplying electricity. Then, the subject of the statute being an invention by no means perfected, procedure is cheapened and experiments are encouraged by allowing the Board of Trade, under certain conditions, to stand in the place of Parliament, and issue renewable licences to local authorities, companies, or persons, for seven years¹ or any shorter term, permitting the supply of electricity in any specified area. As the consent of every local authority within whose jurisdiction a licence will operate must first be obtained, it follows that, when the procedure is by licence, minor authorities can close their districts, for electric lighting purposes, against the major authorities who now supply them with gas; or may impose conditions and stipulate that they, and not the licensed authority, shall break up streets.²

Licences by
Board of
Trade.

In the opinion of the Board of Trade, trading companies were not likely to invest large amounts of capital in permanent works for so new an undertaking upon a seven years' tenure.³ Moreover, local authorities who were inert, or who possessed gas-works, and therefore would probably favour no new mode of lighting, could interpose an absolute veto upon the grant of licences. The Act provided for these two contingencies by enabling the Board of Trade to grant Provisional Orders

Provisional
Orders.

¹ In the draft Bill the maximum term was five years; but an extension of the term, proposed without success in the Commons, was adopted by the Lords.

² 45 & 46 Vict. c. 56, s. 3. Applications for licences by local authorities must be approved by a special meeting of these bodies. Opportunities for "representation or objection" must be given by the Board of Trade to "all parties interested" (sub-sect. 5). No. 10 of the Board

of Trade rules is as follows:—"In all cases of applications for a licence, renewal of licence, or Provisional Order, to which objection is made by any person locally interested, the Board of Trade will, if either the applicants or the objectors so desire, hold a local inquiry, of which due notice will be given."

³ Commons' Committee on Electric Lighting Provisional Orders Bills, 1883; Evidence of Sir T. H. Farrer, pp. 2, 21.

without limit of time, and without the consent of local authorities.¹ But these Orders are not valid until confirmed by Parliament, and may there be opposed in the usual way, upon petition, by local authorities or other parties having a *locus standi*. If the undertaking should prove a failure, or the Order sanctioning it inapplicable, the confirming Act may "be repealed, altered, or amended" by any subsequent Provisional Order granted by the Board of Trade and confirmed by Parliament.² Another important power given to the Board is that of making rules governing applications for licences or Orders, and the opposition to them, the fees to be paid, the holding of local inquiries, which are discretionary, and any other matters arising under the Act. Rules thus made are to be laid before the two Houses, but require no confirmation by Parliament, and are to receive judicial notice and be of the same force as if they formed part of the Act.³

If the procedure is by licence or by Provisional Order, it is clear that the Board of Trade, subject to the veto of local authorities in the former case, can impose upon promoters what terms they think fit. Among these terms are "the limits within which, and the conditions under which, a supply of electricity is to be compulsory or permissive; the securing a regular and efficient supply of electricity;" and the limitation of prices.⁴ Like the Joint Committee on Railways in 1872,⁵ the Board of Trade have not provided for any revision of prices, nor have they attached much value to clauses limiting price, relying rather upon competition between gas and electricity, as well as between the electric companies themselves.⁶ Nevertheless, a maximum price has been

Rules issued
by Board of
Trade.

Price.

¹ Sect. 4. Orders were thus granted to private companies in 1883 against the wishes of the Strand and Westminster District Boards.

² Sect. 4, sub-sect. (4).

³ Sect. 5. ⁴ Sect. 6.

⁵ *Ante*, p. 176.

⁶ Commons' Committee on Electric

Lighting Provisional Orders Bills, 1883; Evidence of Sir T. H. Farrer, pp. 5, 10. See also Board of Trade Report on Electric Lighting, 1883, which gives the following reasons for inserting no clauses limiting profits or revising prices:—"In the case of companies, the undertaking can be

fixed by the Board in the licences and Orders hitherto issued.¹

But by far the widest powers exercised by the department are those which have been based upon the proviso in the public Act "for the revocation of the licence, Order or special Act, where the undertakers have, in the opinion of the Board

Promoters' powers revoked by Board of Trade.

purchased by the local authority, at furthest, at the end of twenty-one years, at the then value of the plant. In the meantime there is, in the first place, the competition with gas, which is likely to be very severe; and in the second place, the potential competition with other undertakers to keep down prices; as the Board of Trade see no reason whatever why such last-mentioned competition should not be an active and potent force. The accounts of the undertakers are open to all. No monopoly is, under the Act or the Provisional Order, granted or intended to be granted to them; and should they neglect their duties in the district, or charge exorbitant prices, there is nothing to prevent the immediate grant of a licence or Provisional Order to a competing set of undertakers within the same district. In the case of local authorities, there will be not only competition to look to, but also public opinion; and the Board of Trade prefer to rely upon the above considerations rather than to attempt to impose artificial restrictions, which, in other cases, have not proved too successful."

¹ The basis of charge may be (1) the quantity of energy in the supply; (2) the quantity of electricity supplied; or, unless the Board of Trade otherwise direct, (3) the number of hours during which a supply is given, and the maximum current a consumer

is entitled to take; (4) a charge calculated partly by the quantity of energy or of electricity contained in the supply and partly upon a rental depending on the maximum current asked for by the consumer. (Electric Lighting Order (No. 3) Act, 1884.) The price charged varies from 3*l.* 10*s.* per 100 units, with 6*d.* for every unit above 100, to 3*l.* 15*s.* per 100 units, with 8*d.* for every unit above 100. The price for public lamps is left to be settled by agreement, or, in case of difference, by arbitration. The unit is defined as "the energy contained in a current of 1,000 amperes flowing under an electro-motive force of one volt during one hour." (Ib., Sched. C.) It is calculated that about ten units go to 1,000 feet of gas. At 7*d.* per unit, the maximum fixed in most of the Metropolitan Orders, the electric equivalent of 1,000 feet of gas would therefore be 5*s.* 10*d.* (Committee of 1883, Ev., pp. 10, 34, 72). In the Provisional Order authorizing the Edison Company to supply electricity within the parishes of St. James's, Westminster, and St. Martin, the Committee of 1883 decided that the maximum price per additional unit should be 8*d.* instead of 9*d.*, as sanctioned by the Board of Trade. Among other alterations, the Committee also extended the district assigned to the company (Min. of Proceedings, p. 7).

West London
Electric
Lighting
Order, 1884.

Scheduled
districts, A.
and B.

Partial revo-
cation as to
district B.

of Trade, practically failed to carry the powers granted to them into effect within a reasonable time, or discontinued the exercise of such powers.”¹ This is one of the matters as to which the undertakers are to be “subject to such regulations and conditions as may be inserted in any licence, Order or special Act.” We may now turn to a Provisional Order, confirmed by Parliament in 1884, to ascertain what conditions have been imposed upon companies by virtue of this general enactment.² It is necessary to explain that, in the Orders hitherto made, the area within which undertakers, whether trading bodies or local authorities, are authorized to supply electricity is generally divided into two districts, distinguished as A. and B. These are delineated on maps, which are deposited for purposes of reference; they are also described in separate schedules to the Order. In district A. the powers of the undertakers at once take effect.² They can also apply to the Board of Trade at any time for the extension of their area of supply over the whole or any part of district B.

If they make no such application within two years from the commencement of the Order, the local authority may require the company to do so, specifying the parts of district B. to be supplied. Upon refusal or neglect to undertake this new service, the Board of Trade may transfer the company’s powers over these parts of district B. to the local authority or to some other company.³ If the undertakers

¹ 45 & 46 Vict. c. 56, s. 6, sub-s. (f).

² The particular Order chosen for illustration is the West London Electric Lighting Order, 1884, obtained by the West London Electric Lighting Co., Limited, and authorizing them to erect and maintain electric lines and works and to supply electricity within the parishes of St. James, Westminster, St. Martin-in-the-Fields, and St. George, Han-

over Square.

³ West London Order, 1884, ss. 5—7. In this case district A. has been itself subdivided and subjected to different conditions (ib. s. 20, and Schedule A.; see also Committee on Electric Lighting Orders, 1883; Minutes of Evidence, pp. 44, 58). When local authorities are the undertakers, a representation for the supply of parts of district B. must come from one-fourth of the rate-

elect to add parts of district B. to their area of supply, they must, before commencing any works, and within six months from the period when the Board of Trade sanction such addition, show to the satisfaction of the Board "that they are in a position fully and efficiently to discharge the duties and obligations imposed upon them by this Order throughout the part or parts so added." If they fail to satisfy the Board, or to deposit six per cent. upon the estimated outlay in district B., the Board may revoke the Order as to the new area "upon such terms as they think just."¹ Risk of a similar revocation awaits the undertakers if, within a given period, they do not cause suitable and sufficient distributing mains for the purposes of general supply, upon the parallel system,² to be laid down throughout their newly-acquired area. For such default the Board of Trade may impose penalties, but if they think it is "wilful and unreasonably

Promoters to show sufficiency of capital, and make deposit.

Parallel system of supply.

payers in the area proposed to be added (see Bury St. Edmunds Order, 1884, ss. 6, 7). The clauses relating to the districts of supply are framed by the Board of Trade "on the supposition that a fair area should be included in Schedule A. in which the undertakers may make an experiment, and to which, if they find that experiment not sufficiently remunerative to induce them to extend their operations, they may be allowed to confine themselves." Schedule B. includes a further, though probably less remunerative, area which the undertakers may supply by degrees, subject to the right of local authorities, or of ratepayers, to require an extension of supply, or an abandonment of such area. In view of such abandonment, and as a means of inducing other companies to undertake the supply in district B., clauses are suggested by the Board transferring from the first to the second set of undertakers a portion

of district A. (Mem. issued by Board of Trade, February 26, 1883).

¹ West London Electric Lighting Order, 1884, s. 9.

² This is defined (ib. s. 11) as "a system under which the electricity used by each consumer is drawn off from a double series of mains (described as 'the positive and negative mains') in connection respectively with the positive and negative poles of the immediate source of supply by means of service lines forming a series of parallel circuits." The series system is "a system under which the whole current is utilized at various points situated successively in the same circuit, and is not divided up for the purpose of utilization into different parallel circuits, which supply different consumers." Electricity may be supplied by means of either of these systems, or of "any other system which may be approved of by the Board of Trade either for general or special use."

prolonged, they may, upon the application of the local authority," exercise a power of partial revocation.¹

Power of
Board of
Trade to re-
voke entire
Order.

Capital and
deposit.

Compulsory
works.

Insolvency of
company.

Under the following conditions the whole Order may be revoked by the Board:—(1) Upon such terms as they may think just, as in the case of district B., if, six months after the commencement of the Order, and before beginning any works, the undertakers fail in satisfying the Board "that they are in a position fully and efficiently to discharge the duties and obligations imposed upon them" throughout district A., and if they do not also deposit a sum of 6,500*l*.² (2) If, within two years from the commencement of the Order, the undertakers do not "lay down suitable and sufficient distributing mains for the purposes of general supply upon the parallel system throughout every street and part of a street specified" in Schedule A.,³ and thereafter maintain the same. (3) If, six months after being required to do so, the undertakers fail to provide in like manner for the supply of the remainder of district A., or such portions of it as may be covered by the requisition.⁴ It is again in the discretion of the Board of Trade to inflict penalties for each day's default; or they may, upon the application of the local authority, revoke the Order in whole or in part; or, if the undertakers so desire, may, after hearing the local authority, suffer the Order to remain in force in whole or in part, subject to such conditions as the Board may think fit to impose. These conditions are to be of the like force and effect as though enacted by Parliament.⁵ (4) If, at any time after the Order takes

¹ West London Electric Lighting Order, 1884, s. 22.

² *Ib.* s. 8.

³ *Ib.* ss. 20, 21. These scheduled streets, forming part of district A., are Pall Mall, King Street, St. James's Square, St. James's Street, Regent Street, Piccadilly, Arlington Street, Bennett Street, Duke Street, Jermyn Street.

⁴ *Ib.* A requisition may proceed from any two or more owners or

occupiers of premises in the street to be supplied, or from the local authority in respect of public lamps; but they must bind themselves to take, for a period of three years at the least, such an amount of electricity as will, at the rates charged to ordinary consumers, yield 20 per cent. upon the expense of laying down distributing mains and providing the new supply (*ib.* ss. 23, 24).

⁵ *Ib.* s. 22.

effect, upon representation by a local authority, and after inquiry, the Board of Trade find that the undertakers have, through insolvency, failed to execute works or supply electricity.¹

It appears, therefore, that the Board of Trade have interpreted the duties assigned to them under the public Act by reserving powers of enforcing a partial revocation of statutory rights in three cases, and a total revocation in four; and these powers have hitherto been ratified by Parliament in various confirmation Acts passed during 1883-4. Such powers are wholly at variance with the old doctrine that the authority which binds must unloose.² In the Committee of 1883, some surprise seems to have been felt that the Board should base, upon the brief sub-section in the general statute, so large an authority,³ but no change was made in the clauses conferring this authority. It was, perhaps, held to be justified by the necessity of guarding against monopoly and of dealing summarily, in the public interest, with promoters who were adding to the confusion in our streets by a new and doubtful enterprise, hardly then passed beyond the stage of experiment.

Interpretation of Act of 1882 by Board of Trade.

¹ Ib. s. 67.

² *Eodem modo quo quid constituitur, eodem modo destruitur* (6 Coke, 53). There is a precedent for this legislation in the Tramway Act of 1870, under which the Board of Trade may, (1) upon the representation of the local authority or twenty rate-payers "that the public are deprived of the full benefit" of any tramway, grant renewable licences to third parties to use the tramway, on paying tolls to the promoters (ss. 35-40); or (2) may revoke the powers of promoters, but only if the latter discontinue the working of their tramway for three months after it has once been opened for traffic (s. 41); or in the event of their insolvency (s. 42). In the two last

cases a local authority has a right of purchase. If they do not think fit to exercise this right, the tramway may be removed by the road authority at the cost of the promoters.

³ Chairman: "When you say an Order may be revoked (by the Board of Trade), what is the instrument by which the revocation is to be effected; because the Order takes its final validity from the Act of Parliament?" Sir T. H. Farrer: "Yes, that is so; but the Board of Trade retain the power to revoke it in those cases without coming to Parliament again." Chairman: "Is that provided in the body of the (confirming) Bill, or in each Order separately?" Sir T. H. Farrer: "In each Order separately." (Min. of Ev., p. 11.)

Powers vested
in depart-
ments.

Such powers in the hands of public departments, however ably administered, require at every stage the most careful, constant scrutiny; but the absence of publicity in exercising them makes this scrutiny impossible. When contrasted with the open inquiry before a Parliamentary tribunal, the sharp criticism in and out of Parliament to which decisions there are instantly liable, and the elasticity of these decisions, sometimes faulty no doubt, but always honest and painstaking, and in the end always identified with public interests, we can understand how rigid, repressing and arbitrary a bureaucratic system may become, and how natural is the jealousy with which Englishmen watch any approach towards similar methods of governing by departments.¹

Right of local
authority to
buy, upon any
forfeiture.

For private undertakers the situation is made harder by the fact that their statutory powers, as will be seen, may be revoked upon the application of local authorities, who will thereupon be able to buy the undertaking upon very favourable conditions.² No doubt it is necessary to provide

¹ For further information on this head the Chapters on Provisional Orders and Preliminary Inquiries should be consulted. The Provisional Order system has done much to simplify and cheapen procedure upon small matters not worthy of treatment by direct legislation. The danger is lest it should be carried too far, and should, directly or indirectly, override legislation in matters seriously affecting private and public interests, the practical decision upon which would then be left to zealous departmental officers, of varying views and ability. How much power is in their hands under the Electric Lighting Act may be seen, not only in the possible revocations above mentioned, which may be founded on local inquiries by Board of Trade inspectors, but in the preliminary proceedings. Dur-

ing his examination before the Committee of 1883, Sir T. H. Farrer was asked whether one of the inspectors had not "held an inquiry and thrown out the Order, upon the ground that the company did not show their financial ability to carry out the works?"—*A.* Yes, that was so. *Q.* And in this case he held an inquiry in London, and declined to give the Brush Order, upon the ground that they had already sufficient work in their hands?—*A.* Yes." (Minutes of Evidence, p. 48.) Both decisions may have been well founded; but there is much possible injustice, and some danger, in thus trusting to the discretion of a single individual when large interests are at stake, and the issue is generally one not merely of fact but of expediency.

² By sect. 68, sub-sect. B, of the

that powers granted by Parliament shall not be held in abeyance, and the way blocked to more capable promoters, through neglect or want of resources on the part of the original grantees. There is some danger, however, lest the difficulties of the latter should not receive fair consideration, and lest substantial injustice should be done, if departmental officers are to pronounce wholesale forfeitures at the instance of the very persons who will profit by them.

By analogy to the Tramway Act, the Electric Lighting Bill proposed that municipalities should have an option to purchase after a given time; and the growth of public opinion against the creation of new monopolies is shown by the fact that no one disputed the expediency of conferring this option, though there was, and has since been, much controversy as to the period at which it should arise. In the original draft this period was no more than seven years;¹ the Committee of the House of Commons altered it to fifteen years; the House of Lords extended it to twenty-one years, the term specified in the Tramway Act. At the end of twenty-one years, therefore, from the passing of any Order or special Act,² and afterwards at intervals of seven years, any local authority within whose jurisdiction electricity is supplied, whether by a major authority or by a private company, may purchase the undertaking, or so much of it as is inside their boundary, paying for the lands, buildings, works, materials, and plant, if suitable to be used for the purposes of the undertaking, their fair market value, having regard to their nature, condition

Purchase of
undertaking
by local
authority.

West London Order of 1884, within one month after notice of revocation has been served on the undertakers by the Board of Trade, the local authority may require the promoters to sell the undertaking to them within the area to which the forfeiture applies; the value to be estimated as directed in sect. 27 of the Act of 1882. If no sale can be effected, the local authority may re-

move the works and reinstate the streets at the cost of the undertakers.

¹ Though this was the term in the draft, the Board of Trade really left the question to the Committee (Evidence of Sir T. H. Farrer before Committee of 1882, p. 7).

² Twenty-one years is the maximum period; shorter terms of fifteen years have been fixed in some Orders.

and state of repair.¹ In no case can the undertakers claim any addition to the price "in respect of compulsory purchase, or of goodwill, or of any profits which may be or might have been made from the undertaking, or of any similar consideration."² In disputed cases, the value is to be fixed by an engineer or other fit person nominated as arbitrator by the Board of Trade. Other questions relating to the purchase will be determined by the Board.

General
authority of
Board of
Trade.

Besides the functions already mentioned, the Board of Trade exercise a variety of powers relating to the accounts of undertakers;³ the works they execute;⁴ the maps they are required to prepare, showing the lines of all underground works;⁵ the hours during which a supply of electricity must be maintained; the limits of standard pressure, which may be varied by the Board from time to time, subject to such conditions as they may think fit;⁶ the testing of service lines,⁷ meters,⁸ and regulations for public safety.⁹ Further practical tests of the working of what was to a large extent an experimental Act will show what modifications, if any, should be allowed in the restrictions now put upon promoters. As to the powers conferred upon the Board of Trade, by themselves, in Provisional Orders, promoters must abide by these powers or abandon the Orders. If, however, they proceed by Bill, they may ask Committees to form an independent judgment upon any provisions suggested by the Board for the protection of the public. It will

Future modi-
fications in
Act, if found
necessary.

¹ These words mean that the plant is not to be treated as old copper, but as wires and dynamos serviceable for the undertaking, so far as they are serviceable. (Evidence of Sir T. H. Farrer before Committee of 1883, p. 42.)

² 45 & 46 Vict. c. 56, s. 27. As already stated, these terms will also be the basis of any transfer made as the result of any revocation or partial revocation where works have

been begun; and it may, therefore, be the interest of a local authority to bring about this revocation.

³ West London Electric Lighting Order, 1884, s. 10.

⁴ Ib. ss. 12, 13.

⁵ Ib. ss. 26, 27.

⁶ Ib. s. 29.

⁷ Ib. ss. 34—37.

⁸ Ib. ss. 55, 61, 62.

⁹ Ib. s. 64.

then be for Committees to decide whether those provisions are necessary public safeguards, justified by the spirit of the Act of 1882, or whether they unduly hinder the free development of enterprise and may be safely relaxed or dispensed with. As in numerous other instances, Parliamentary tribunals will, if they think fit, pave the way by their decisions in particular cases for fresh public legislation upon the supply of electricity, in harmony with experience.¹

Another new demand for statutory powers began in 1871, when a company was incorporated for supplying motive power by hydraulic pressure, and for that purpose was authorized to break up streets and lay down pipes within a defined district in East London. In 1884 the company's district was enlarged and now includes each bank of the Thames, and some distance north and south of the river from Vauxhall Bridge to the West India Docks.² At Hull in 1871,³

London
Hydraulic
Power Acts,
1871-84.

¹ According to the report of the Board of Trade made June 27, 1884, only four applications were made for Provisional Orders in that Session, and one of these was merely a transfer of existing powers from the Edison and Swan Companies, after their amalgamation, to the united company. This contrast with the sixty-nine Orders confirmed by Parliament in 1883 is suggestive. Not less suggestive is the fate of all these Orders when promoted by companies. Within six months from their commencement the undertakers in all such cases had to "satisfy the Board of Trade that they were in a position to carry out the compulsory works, or to appropriate a certain sum as a separate capital for the purposes of the undertaking, and to deposit or secure a specified sum of money." The alternative was revocation of the Order, unless an extension of time was granted by the Board. On

February 25, 1884, the limit of six months expired, but before that time applications for an extension of time were received from all the undertakers except one company, who had already gone into liquidation. After consulting the various local authorities concerned, the Board of Trade granted an extension of time to seven companies in respect of twenty-four towns or places. Subsequently a further extension of time was granted to three of the same companies in respect of some of the same towns or places. All the other Orders were revoked. No applications for licences had been received by the Board since their report in 1883; and of the licences previously granted, only one had been proceeded with. (Com. Paper 244, Session 1884.)

² London Hydraulic Pressure Company's Acts, 1871 and 1884 (34 & 35 Vict. c. 121; 47 & 48 Vict. c. 72).

³ 35 & 36 Vict. c. 18.

Liverpool in 1872,¹ and at Newport (Monmouthshire) in 1884,² companies were incorporated for similar objects. The provision of central pumping stations and machinery in manufacturing towns or districts, with mains laid for the distribution of power, like gas and water, seems to promise a considerable economy of force; and water is here so far a rival to electricity. Among the objects specified in these Acts are the working of cranes, dock gates and general machinery, and the extinction of fires. In all the cases mentioned, the promoters are authorized to take water from the nearest river, but are bound under penalties to use it for motive power only. Generally, streets can only be broken up by consent of the local authorities.

Birmingham
Compressed
Air Power
Company's
Act, 1884.

A more elaborate measure of the same class is one passed in 1884 authorizing a company at Birmingham, with a share capital of 300,000*l.* and loan capital of 75,000*l.*, to apply compressed air "for distributing motive power from one or more centres to manufactories, furnaces and works, and the supply of air for ventilating, refrigerating or blowing furnaces, and for various other purposes."³ This Act is remarkable for the complete control over the undertaking which the Corporation of Birmingham have secured, in the interests of consumers and of the whole community. If streets are to be opened, the corporation may elect to do the necessary works at the company's expense. The company are bound to maintain in their mains a constant supply of compressed air, day and night, at a specified minimum pressure, sufficient for the use of all consumers. They are also bound to supply compressed air under the prescribed pressure to all owners or occupiers of premises situate within twenty-five yards from any main.⁴ Profits beyond ten per cent.

Profits.

¹ 35 & 36 Vict. c. 16; and again in 1884 by 47 & 48 Vict. c. 121.

² 47 & 48 Vict. c. 122.

³ 47 & 48 Vict. c. 199.

⁴ *Ib.* s. 30. This is analogous to the compulsory supply of gas se-

cured to consumers by sect. 11 of the Gas Works Clauses Act, 1871, the provisions of which section are made expressly applicable in the case under notice.

are to be divided between the shareholders and their customers, as a security for which the company must furnish annual accounts in a form prescribed by the corporation. Following the precedents of the Tramways and Electric Lighting Acts, the corporation, at the end of twenty-one years, take power to purchase the company's works and plant, without compensation for compulsory sale, for goodwill or profits; and the company undertake to support any application to Parliament for this purpose.¹ Finally, there is an express declaration that nothing in the Act "shall be construed as entitling the company to any monopoly or exclusive right to supply compressed air within the borough or any part thereof."²

Sale to corporation after twenty-one years.

We have seen that the earliest supplies of water to towns were furnished by municipalities, and that private enterprise was a more recent development.³ The statutory history of the London companies will be traced elsewhere.⁴ Some reference, however, should here be made to the legislation which regulates water companies generally. With few exceptions, their profits have not been such as those yielded by gas companies, although they sell an article for which they usually pay nothing.⁵ One reason may be the fact that, as they do not supply by meter for domestic purposes,⁶ they have virtually but little control over waste, notwithstanding stringent legislation directed against waste. In theory, a supply unregulated by meter rests on an unsound base: first, because consumers have no inducement to economical use;

Water supply to towns.

Principle of charge for water.

¹ *Ib.* s. 36. Similar powers of purchase are reserved to the corporation in the Liverpool Act (s. 52). Sects. 53, 54, of the same Act provide that if the company are wound up, their mains, &c. shall belong to the corporation, who shall not be prevented by the Act from themselves supplying hydraulic power.

² *Ib.* s. 40.

³ *Ante*, pp. 9—10.

⁴ *Post*, chapter on London Water Supply.

⁵ The London water companies whose intakes are from the Thames & Lea pay annually about 12,000*l.* to the Thames & Lea Conservancy Boards for the privilege of drawing water from those rivers.

⁶ For trade purposes the supply is usually by meter.

secondly, because the price charged depends on rateable value, not on consumption. In practice, the poor thus obtain a cheap supply of water at the cost of other classes of the community: a distinct social benefit, though this approach towards the principles of socialism is not always recognized, and would be better made by more direct methods.

Water Works
Clauses Act,
1847.

Profits.

Restrictions upon the dividends of water companies had before been prescribed in their special statutes. In 1847 these restrictions, as in the case of gas companies, were embodied in general legislation.¹ Profits were not to exceed a maximum of ten per cent., or such lower amount as was fixed in the special Act, unless for the purpose of making up deficiencies in previous dividends.²

Reduction of
water rates.

On the petition of any two water-rate payers, Courts of Quarter Sessions in England, and in Scotland the sheriff of the county, might appoint some accountant or competent person to examine a water company's accounts; and if, the reserve fund having reached the prescribed maximum, the profits exceeded ten per cent. or any lower rate fixed in their special Act, the company were to "make such a rateable reduction in the rates for water as, in the judgment of the Court or sheriff, shall be proper," leaving to the shareholders "a profit as near as may be to the prescribed rate." Notwithstanding this provision, reductions in water rates by companies are believed to be practically unknown.³

Besides the provisions just described, the Act of 1847 contains others analogous to those imposed on gas companies, as

¹ 10 & 11 Vict. c. 17, amended in 1863 by 26 & 27 Vict. c. 93.

² 10 & 11 Vict. c. 17, s. 75. In some of the older Acts, as in those for the supply of gas, no rates were specified. The terms were to be such as the company and the consumers should mutually agree upon (West Middlesex Water Act, 1806, s. 59); and a subsequent Act of the same company, in 1810 (s. 13), in

language hardly less vague, provided that the company should only demand reasonable rates. (*Post*, chapter on London Water Supply.)

³ Silverthorne on the Purchase of Gas and Water Works, p. 69. The author adds that—the ruling profits of water companies rarely exceed six or seven per cent. upon their paid-up capital.

to a reserve fund, the production of accounts, and the right of owners and occupiers to a supply on laying down service pipes and tendering the rate. The company must also lay down pipes and furnish water to every part of the town or district within their limits if required so to do by owners and occupiers who will bind themselves to take, for three successive years at least, a supply of water which will yield to the company one-tenth part of the expense of providing and laying down the pipes.¹ At the request and at the cost of the local authority, companies must also furnish, at special rates, water for cleansing the sewers and drains, watering the streets, and supplying any public cisterns and any public baths or washhouses supported by the rates.² Water rates are to be paid by consumers according to the annual value of the tenement supplied, and any dispute as to such value may be determined by two justices. Lastly, Parliament recognized the advantages to health and comfort of a constant supply, and enacted that, unless otherwise ordered in the special Act, a supply of pure and wholesome water, sufficient for the domestic use of all the inhabitants entitled to demand a supply, should be "constantly laid on at such a pressure as will make the water reach the top storey of the highest houses."³

Compulsory supply.

Rates.

Constant service.

A constant supply was formerly regarded by water companies as committing them to a task often beyond their resources, through the increased consumption, or at all events, the greater waste it would lead to. Precautions are taken both in the Acts of 1847 and 1863 to insure proper internal fittings; penalties are imposed on consumers for neglect; and companies have a right of entry between certain hours to the houses they supply, in order to ascertain whether there is any waste or misuse of the water. Besides these remedies under the general law, Parliament has in several special Acts given to water undertakers additional control over house fittings, and powers to check waste. In London,

Waste of water.

¹ 10 & 11 Vict. c. 17, s. 35.³ *Ib.* s. 35.² *Ib.* s. 37.

regulations to this effect have been settled by the Board of Trade under the authority of the Metropolis Water Act, 1871. In Bury, similar regulations are contained in the special Act.¹ In other cases they have been left to be settled by the justices, or by arbitration, or by the Local Government Board.²

Recent legis-
lation against
waste, &c.

In the most recent Water Acts, clauses in common form give to companies who afford a constant supply large powers to make regulations for preventing the waste, misuse or contamination of water.³ These regulations, however, have no effect until confirmed by the Local Government Board, and all sanitary authorities within a company's district may object to them.⁴ Sometimes special Acts relieve a company from the obligation to give a constant supply under pressure until the completion of certain works, or until a specified period. It is sometimes also provided that, notwithstanding anything in the Act of 1847 to the contrary, the company shall not be bound to supply at a pressure greater than that to be obtained by gravitation from their authorized reservoirs.⁵ As a result of this provision the company need not be required to lay on water to any houses which the water cannot reach by gravitation from their works.⁶ Auction clauses are rarely applied to the creation of new capital,⁷ nor are water companies' divi-

Period for
constant
supply post-
poned.

Pressure
depending on
gravitation.

Capital.

¹ Bury Improvement Act, 1872, Schedule G. With a pressure of 26 lbs., a pin-point leak is said to waste 1,700 gallons in a year.

² At Sheffield, Portsmouth and Devonport they were thus respectively dealt with, after inquiry and considerable opposition; a result not surprising considering the additional outlay thrown upon consumers.

³ The quantity of water required to give a sufficient supply must vary with the circumstances of each town, but in the opinion of the Commons' Committee on East London Water Bills, 1867 (p. 17), "an average of twenty gallons a day per head is an abundant allowance for all domestic

purposes, allowing for considerable, but perhaps unavoidable waste;" and according to Dr. Letheby, twenty gallons per head a day is "a very good and sufficient supply" for domestic, sanitary and trade purposes (Evidence before Royal Commissioners on Water Supply, 1869, p. 237).

⁴ Rickmansworth Water Works Act, 1884, ss. 58—63; Llanfairfechan Water Works Act, 1884, ss. 62—68.

⁵ Plympton and District Water Works Act, 1884, s. 42.

⁶ Rickmansworth Water Works Act, 1884, s. 39.

⁷ Mr. Stevenson gives four cases (p. 88) in which the special Acts provide that all new shares shall be

dends regulated by a sliding scale arrangement. As in the case of gas companies, the conversion of borrowed money into capital is forbidden, unless the dividends are limited to five per cent. Usually undertakers are allowed on their original capital the maximum profit of ten per cent. specified in the general Acts. This privilege is especially given where the area of supply is inhabited by a somewhat scattered population, and the expense of distribution is therefore large in proportion to revenue. Upon the issue of new capital by existing companies a lower limit of dividend is fixed, sometimes five,¹ but generally seven per cent.²

Dividends.

In the year 1845 a Royal Commission reported upon the means of improving the health of towns and densely populated districts. This report was considered in 1846 by a Select Committee of the House of Commons over which Mr. Hume presided; and the recommendations of the Commissioners, endorsed as they were by the Committee, would, if adopted by Parliament, have prevented most of the complaints since made as to the evils of private monopoly. One of these recommendations was that the construction of water works for purposes of private gain should be authorized only upon pre-arranged terms and conditions of purchase on behalf of the public.³ Another recommendation was that water works should, if possible, be entrusted to the local authorities who were also responsible for drainage and paving. The Bills of 1846 for the establishment of new water works were, along with the Improvement Bills of the Session, referred to Mr. Hume's Committee, who were of opinion that such provisions were essential for the protection of the public. But the suggestions both of the Commissioners

Health of
Towns Com-
mission, 1845.
Commons'
Committee,
1846.

New water-
works subject
to option of
purchase by
local authori-
ties.

offered by auction: the Nottingham Water Acts, 1854 and 1878, and the East Grinstead and Grand Junction Acts of 1878.

¹ Bristol Water Works Act, 1882, s. 27.

² South Essex Water Works Act,

1882, s. 19; Queenstown Water Works Act, 1882, s. 28; Swanage Water Act, 1884, s. 15.

³ Reports of Royal Commission of Inquiry into the Health of Towns, 1844—5; Commons' Committee on Private Bills, 1846, p. 3.

and the Committee fell upon deaf ears. If, in all the new water and gas Bills dating from that period, and in all extension Bills promoted by existing gas and water companies, the Standing Orders of Parliament had directed the insertion of clauses enabling local authorities, after a given period, to purchase these undertakings upon equitable terms, how much money might have been saved to the community, and what endless friction, in various forms, between public and private interests might have been avoided!

Ownership of
water and gas
works by
local authori-
ties.

That no similar warning is now needed by Parliament on this head has been shown by the Tramway and Electric Lighting Acts, as well as by other recent instances of legislation which have been cited. But local authorities have had to rely upon themselves in gaining or rather, it may often be said, in regaining possession of the water supply; and they have been in some respects hindered rather than helped in these attempts by public legislation.¹ Hitherto, the metropolis stands almost alone, among our great towns, in its continued supply of water and light by private companies. In Glasgow, Manchester, Birmingham, Leeds, Dundee, Aberdeen, Bradford, both the gas and water works have been acquired by the municipalities. Their example has been followed in the supply of water by Edinburgh, Liverpool and other places in Great Britain, so that more than 270 local authorities now have this supply in their own hands.² In like manner the supply of gas is now in

¹ Municipal Corporation (Borough Funds) Act, s. 2. As to the effect of this Act, see *post*, Chap. "Local Authorities."

² These figures have been compiled, a work of considerable labour, from Com. Return 265, Session 1879, furnished by the Local Government Board, and containing answers from 944 urban sanitary authorities in England and Wales as to the sources of water supply, nature of service, &c., in these districts. Most

of the answers only refer incidentally to the ownership of the water works, so that no more than approximate accuracy can be claimed for the statement in the text. Strangely enough, this elementary information as to the number of local authorities possessing water works, and their outlay upon such works, appears to be nowhere directly accessible. It will be understood that in many cases the water supply was first undertaken by local authorities, especially in

the hands of about 150 local authorities,¹ some of whom, as at Manchester, derive considerable profits from this undertaking,² and have been able to reduce prices, relieve the rates, and at the same time gradually extinguish the capital outlay by means of sinking funds.

By far the larger proportion of these transfers have been made by means of private legislation, after due inquiry, during the last fifteen years; nearly all were made within the last quarter of a century. Liberal, sometimes too liberal, terms have been secured by the vendors as the result of arbitration under the respective Acts, or of agreement. On the other hand, though upon water undertakings ratepayers have not usually obtained a profit, solid public advantages have accrued from their possession of both gas and water works. More striking proofs of the growth of wealth and public spirit in our provincial towns could hardly be given than by the legislation which has thus gradually handed over great commercial undertakings from private to public bodies. Happily, we may add, in the Committee rooms, where the conduct of local authorities is at times freely canvassed, and their shortcomings are exposed with a frank disregard for past services, corruption and jobbery in carrying on these undertakings are most seldom, if

small scattered districts not likely to yield a profitable return to private enterprise; but Mr. Stevenson, in the work already cited, mentions forty-three transfers of water undertakings from companies to public bodies under the authority of Parliament between the years 1866 and 1878.

¹ According to the Board of Trade returns (Commons Papers 201—2, Session 1884), there were then 361 gas undertakings in the United Kingdom belonging to private companies, and 150 to local authorities. The former had an authorized share and loan capital of 48,153,000*l.*, of

which 34,114,000*l.* was paid up and borrowed; the latter were authorized to borrow 21,163,000*l.* in respect of gas works, and had actually borrowed 17,874,000*l.* The number of consumers was respectively 1,091,000 and 928,000. This comparative statement includes the metropolitan companies. Omitting these, the disproportion is not large, and by means of Transfer Acts is every year becoming less. In some cases the gas as well as the water works were originally established by local authorities.

² See Sir Joseph Heron's statement, cited *ante*, p. 235, n.

ever, even hinted at, and good and economical management, though unpaid, is the rule.

Improved
procedure on
private Bills.

Hearings at
bar.

Transfer to
Committees.

Number now
serving on
Committees.

Chairmen's
panel.

Some notice has been taken in the foregoing pages of improvements from time to time made by the two Houses in their procedure upon private Bills. Until the beginning of the present century, evidence on local and personal Bills was frequently heard at the bar of the House of Commons. In the Lords, evidence on Divorce Bills was heard at the bar until the transfer of this jurisdiction to the Divorce Court. In the former case, at least, the result must often have been slovenly, ill-considered private legislation, as well as serious interference with public business. In transferring this jurisdiction to Committees, the House did well. But, in conformity with ancient practice, Committees were practically made to consist of the whole House, for all members who chose might attend and vote. A first reform was the invention, in 1840, of Speakers' lists: a mode of assigning local Bills to a large representation of local members. Gradually the numbers were reduced; but Committees still remained unwieldy in size. They were also to a great extent partisan assemblies, composed of friends of a Bill or members pledged to oppose it. A reform of great value has been the reconstitution of Committees. In those of the Commons, when local representation was put an end to in 1855, the number of members was five. It has since been reduced to four, the chairman having a casting-vote. Five is the number retained by the peers, among whom the chairman exercises no such power. Being now few in number, members have a greater sense of responsibility, and are at the same time carefully chosen so as to be free from all local or personal bias.¹

Another change for the better is in the previous choice of a chairman of each Committee, made in the House of Commons from a chairmen's panel, by a Committee of Selection. Instead, therefore, of a haphazard choice by the Committee

¹ *Ante*, p. 70; see also *post*, chapter on Constitution of Committees.

in each case, or, as the old practice was, the election as a matter of course of the member who moved to introduce the Bill, there is now, in both Houses, a chairman carefully chosen (as far as is possible in the Commons, owing to the shifting composition of the House itself) for his experience in presiding over similar inquiries, and for acquaintance with the particular class of subjects in his group.

In 1844, the old Committees and Sub-Committees on Petitions, to whom were referred all Standing Order questions, were replaced in the House of Commons by permanent examiners. The independent inquiries instituted by each House into matters of fact respecting compliance or non-compliance with its Orders had been attended with great expense and delay. Delay was, in fact, one of the means sometimes resorted to by opponents, both in the Committees when local members were allowed "voices," and in the preliminary Standing Order investigations. Objections of the most technical and frivolous kind were made and sometimes allowed. Promoters were required to serve all notices upon owners and occupiers by personal agency. These notices in some cases were numbered by hundreds; and as each service might be disputed and had to be proved, there must be a cloud of Standing Order witnesses, with costs multiplied at this stage beyond all reason. Now, two examiners, representing the two Houses, begin their work before the Session opens, so that delay no longer arises from these inquiries. Service of notices through the post has been substituted for personal service. Affidavits are accepted in proof of compliance with Orders. How difficult a barrier in the way of Private Bills has thus been swept away, will be seen by the more detailed description of the old system given hereafter.¹ This barrier was made more difficult by serious and sometimes conflicting differences between the Standing Orders of the two Houses. Each House still preserves its own code, but though some differences remain, both have now been brought into substantial harmony.

Sub-Committees on Petitions.

Standing Order inquiries.

Service of notices.

Examiners.

Conflicting Orders.

¹ *Post*, chapters on Procedure and the Standing Orders of Parliament.

Ingrossment
of Bills.

Promoters, again, found their costs swollen by the system of ingrossment¹ and breviates.² From the earliest times of Parliamentary record, every private as well as public Bill, and every alteration in it, was transcribed by hand on parchment in beautiful characters, specimens of which may be seen in the volumes of the Record Commissioners, for preservation in the Parliament Rolls, or in Chancery. It seemed almost impious to disturb the usage of centuries, and put a stop to the employment of a chosen band of clerkly copyists, with traditions of their craft handed down for so many generations. Ingrossing, indeed, died hard; it was not discontinued until 1849, when printed Bills were substituted as records. Breviates were a modern revival of what seems to have been an old custom. They were précis of the chief objects of each Bill, printed along with it; and for public measures such explanations have a value now sometimes recognized. Applied to private Bills, however, they were not read, and ceased to be issued in 1851, as being of no practical utility.

Breviates.

Fees charged
in Parliament.

By no means an immaterial part of the costs of private Bill legislation are the fees which must be paid to each House, not only by promoters but by petitioners. These fees are properly charged in order to defray the expenses to which Parliament is put by the maintenance of a staff of officials employed in the two private Bill departments. In fact, it will be seen that the fees so paid do more than defray this expenditure, and suitors in Parliament make a substantial contribution towards the general establishment charges of both Houses.³ In the Chapter relating to fees will be found some account of the numerous inquiries from time to time made by each House into their amount and incidence. At the beginning of the century they were excessive in amount, and

¹ *Post*, pp. 319—322.

² *Post*, chapter on Standing Orders.

³ This is admittedly so in the Commons (*post*, chapter on Fees): the returns supplied by the other House point to the same conclusion.

the system upon which they were assessed was so arbitrary and uncertain that even an experienced agent was often unable to say with certainty what would be charged upon certain classes of Bills. After frequent complaints, both Houses more than once reduced the fees; above all, a simple, intelligible scale was introduced, preventing the unseemly disputes and appeals to Mr. Speaker formerly not uncommon.

A hindrance to reduction of fees and simplicity in levying them was the fact that at one time nearly all the officers of the two Houses, from the Lord Chancellor downwards, derived some of their emoluments from private Bills. A reform much needed, and not in the interest of suitors alone, was the gradual substitution of salaries for fees in both Houses. Another salutary reform abolished the system under which clerks of the House of Commons had long acted as agents in the promotion of private Bills, being paid by promoters for their services in that capacity. By these and other minor changes, and to a great extent within living memory, Parliamentary procedure has been greatly improved; much unnecessary cost has been retrenched; while Committees in both Houses have been so constituted as to be thoroughly impartial and at the same time efficient.

Some recent Returns¹ give the total expenditure by local authorities, with other public bodies, and by railway, gas, water, tramway and other companies, in promoting or opposing private Bills between the years 1872-82, inclusive. These Returns are misleading, inasmuch as in most, if not in all cases, they cover the cost, often very considerable, of plans, valuation of land, surveys, and other preliminary expenses, engineering rather than legal.² Many of the Returns, also, include a

Officials in Parliament in part paid by private Bill fees.

Parliamentary agency.

Costs of private Bill legislation.

¹ Expenses incurred by railway, gas and water companies in Parliament from 1872 to 1882 inclusive (Com. Return, 299, Session 1883); the same as to local authorities in the United Kingdom (ib. 351); and as to canal, tramway, and dock

companies, harbour, navigation, pier and port authorities (ib. 303, Parts I. and II.).

² Deducting these preliminary expenses for inquiry, land-valuing, plans, &c., needful whatever be the tribunal, the privileges obtained by

period when costs in private Bill legislation were largely increased by defects of system, now amended. Taken as a whole, the Returns only prove what hardly required proof, namely, that when the sanction of Parliament is sought for changes in the existing law, usually involving large pecuniary issues, affecting to a greater or less degree the status and welfare of rich and powerful companies or communities, and demanding, on all sides, the services of skilled witnesses, the very highest in their respective professions, the costs of obtaining or opposing such legislation cannot fail to be heavy. In ordinary litigation, a still more disproportionate outlay has frequently to be faced, when the interests concerned are large,¹ but they seldom approach in magnitude the interests habitually represented in Parliament, nor do they, like the latter, invariably demand the evidence of trained and highly-paid experts.

Results of any
change of
tribunal.

A change of tribunal, from Parliament to some outside authority, might, and indeed would, affect the character and weight of the decision, but would alter none of the other conditions which make existing procedure costly. The questions to be determined would be equally grave; the pecuniary interests and resources of promoters and petitioners would remain the same; so would their determination to advance or defend their respective interests by every legitimate means open to them, including the best evidence and advocacy they could procure. If there were local inquiries, such evidence

railways in Parliament during that period have cost them not more than one per cent. upon the capital authorized; "not much, considering the various extensive rights interfered with."—"L.," "The Times," Feb. 15, 1884; and see *post*, chapter on Procedure.

Not to quote other instances, take that of the *London Financial Association v. Kelk* (L. R., 26 Ch. D. 127), a case which occupied thirty days in

hearing before a Vice-Chancellor in 1883-4, and employed twenty-eight counsel. It will be found on inquiry that counsel's fees in this and other exceptionally important cases, both in the Chancery and Common Law Divisions, are considerably higher than the Parliamentary scale. Any excess of costs in Parliament would be due mainly to the sums paid for professional evidence, and for fees charged by the two Houses.

and advocacy, drawn almost always from London, would largely increase in cost,¹ or would be reserved for the appeal to Parliament, and local inquiries would then be a sort of sham fight, an incomplete and useless, but not inexpensive, rehearsal of the real contest.² On the other hand, if Parliament surrendered this jurisdiction, there would be substituted a little army of inspectors or other officials, necessarily not the highest in their respective professions, with the addition of a well-paid Court or Courts, in the place of unpaid tribunals whose judgments command general confidence and respect, and whose constitutional province it is to decide whether changes in the law are expedient, and whether, in view of expected public benefits, private interests shall suffer, it may be, irreparable injury.

As to local authorities, and the communities they represent, Bills promoted by local authorities. if they cannot agree, or if in their plans for local improvement they interfere with private interests, here again experience shows that when the stakes are big enough, whatever the tribunal, and wherever it may be, litigation must needs prove costly. But a recent case also shows that, when a man of high position and authority consents to intervene, much may be done to reconcile differences, suggest fair terms of compromise, and avoid the necessity for any Parliamentary contest.³ A cheap and peaceful settlement of this nature ought often to be possible. When, however, local feeling runs high, and interests are found to be irreconcilable, the supreme authority which must then intervene, whether

¹ In February, 1884, the local inquiry opened by an inspector of the Local Government Board, at Kingston, into the Lower Thames Valley Drainage Scheme, was at once adjourned to London for convenience as well as economy, and there lasted fourteen days.

² See on this point, chapter on Preliminary Inquiries.

³ This is the case of the Cork Butter Market Bill, 1884, which

gave rise to disputes affecting a very important industry in the south-west of Ireland. Lord FitzGerald, acting as an informal arbitrator, heard on the spot the representations of the respective parties, suggested terms of arrangement, and these were embodied in the Bill, which eventually passed at a comparatively trifling expense without opposition (47 & 48 Vict. c. 119).

Ad valorem
fees in both
Houses.

Investments
in statutory
undertakings.

affecting public bodies, or great companies, cannot be exercised by the High Court of Parliament, or any other Court, without a cost more or less proportionate to the nature of the litigation¹ and the interests it represents. Each House recognizes this common-sense conclusion by fixing a *pro rata* scale of fees, which vary upon the successive stages of a Bill "according to the money to be raised or expended under its authority for the execution of works."²

As far as the materials admit, some account will now be given of the money invested in undertakings sanctioned by Parliament or advanced upon these securities. Unfortunately, the materials are scattered and incomplete. It would be well worth the while of Parliament to record the amount of loans by public bodies and of the share, stock, and loan capital of companies authorized in each Session, arranged according to the different classes of works and undertakings. Such statistics, extending over the last half century, would be invaluable. As it is, we have to go outside the usual departmental returns for much of this information:—

Public or Private Undertakings.	Authorized.	Paid-up or borrowed.
Share, stock, and loan capital of railways in United Kingdom ³	£ 904,951,000	£ 784,921,000
Share, stock, and loan capital of gas undertakings in United Kingdom (other than local authorities), excluding Metropolis ⁴	31,981,000	21,456,000

¹ A case often cited as an instance of lavish expenditure is the Sligo Improvement Act, 1869. The facts are that the town was evenly divided in opinion, and a running fight was kept up by both parties for three successive years. In the first two Sessions, 1867 and 1868, vested interests proved too powerful to be disturbed; in the third Session the promoters carried their scheme through both Houses. Whatever the tribunal, the costs in such a case, or

in the far larger issues raised by the Manchester Ship Canal Bill, must have been enormous.

² Commons' Table of Fees, 1885. Fees in the House of Lords rest on a similar basis.

³ Railway Returns for 1883, p. 4 [C. 4087], issued by Board of Trade in 1884. Of the above authorized capital, 671,899,000*l.* is in shares and stock, and 233,000,000*l.* loan capital.

⁴ Com. Return, 202, Session 1884,

Public or Private Undertakings.	Authorized.	Paid-up or borrowed.
Share, stock, and loan capital of gas undertakings in Metropolis ¹	£ 16,171,000	£ 13,657,000
Loans raised by local authorities on gas undertakings ²	21,163,000	17,874,000
Loans raised by local authorities on water works ³	21,447,000	21,447,000
Share and loan capital of tramways in United Kingdom ⁴	16,250,000	11,008,000
Consolidated Stock issued by Metropolitan Board to Dec. 31, 1883 ⁵	22,406,000	22,406,000
Loans outstanding against Corporation of London and Commissioners of Sewers to Dec. 31, 1882 ⁶	5,928,000	5,928,000
Loans outstanding against other Metropolitan authorities at same date ⁷	3,841,000	3,841,000
Loans outstanding against harbour authorities at Dec. 31, 1882 ⁸	24,815,000	24,815,000
Loans outstanding against drainage, embankment and navigation boards and commissioners ⁹	1,675,000	1,675,000
Loans outstanding against town councils and other urban and rural sanitary authorities (estimate) ⁹	7,000,000	7,000,000

p. 79. It applies, with the two next Returns, to capital and loans as at December 31, 1883.

¹ *Ib.*; this is the capital of the three Metropolitan companies, the Gas Light and Coke, Commercial, and South Metropolitan. Suburban gas companies are not included.

² *Ib.* 201, Session 1884, p. 34.

³ Burdett's "Official Intelligence" (Stock Exchange), for the year 1884, p. 967, gives a list of returns from forty municipalities which have raised 21,447,000*l.* for water works. According to Com. Return, 371, Session 1879, the loans for this purpose were then 19,063,000*l.*

⁴ Com. Return, 253, Session 1884, p. 3. These figures come down to June 30, 1884. Of 9,750,000*l.* actually expended on tramways, 2,227,000*l.* had been spent by local authorities, and 7,523,000*l.* by private companies.

⁵ *Ib.* 136, Session 1884, p. 2. Of the sum mentioned, 71,685*l.* had been redeemed, leaving 22,334,000*l.*

outstanding.

⁶ Com. Return, 126, Session 1884, p. 15. It is not possible to distinguish how much of the sum mentioned was borrowed under statute.

⁷ *Ib.* The same remark applies to these loans. Some of them were no doubt made under the general law.

⁸ *Ib.*, p. 11. This Return shows loans outstanding at the end of 1882 against local authorities, including the Metropolis, amounting to 151,700,000*l.* Of this sum, 70,377,000*l.* was borrowed by provincial town councils, and other urban and rural sanitary authorities; but how much was raised by private Improvement Acts, and how much under the Sanitary and Public Health Acts, does not appear. The estimate of 7,000,000*l.* in the text is founded on the moderate assumption that about one-tenth of the total loans of local sanitary authorities has been raised by private Improvement or other Acts, and has

Public or Private Undertakings.	Authorized.	Paid-up or borrowed.
Capital raised or expended by Metropolitan water companies ¹	£ 13,230,000	£ 13,230,000
Capital raised or expended by provincial water companies ²	13,500,000	11,100,000
Capital raised or expended by canal companies ³	25,000,000	25,000,000
Capital expenditure by Indian railways, under statute ⁴	103,000,000	103,000,000
Capital expenditure by dock companies, excluding the Thames ⁵	13,000,000	13,000,000
Capital of dock companies in the Thames ⁶	16,000,000	14,600,000
Total £	1,261,358,000	1,115,958,000

Capital embarked in other statutory undertakings.

Besides the expenditure just indicated, there have been authorized by special Acts a great variety of undertakings, the cost of which, or the capital engaged in them, should be added to the foregoing list. Since 1800 there have been dealt with by statute about a hundred and fifty Fire and Life Assurance Companies, twenty Marine Assurance, and over thirty Cemetery Companies. Bridges have been built or rebuilt in large numbers all over the kingdom under statu-

not been included in the class of remunerative expenditure sanctioned by Parliament, and already reckoned, *e.g.* for gas and water works.

¹ Commons' Return, 163, Session 1884. The authorized capital is not given. The accounts are those of the eight London companies—the Chelsea, East London, Grand Junction, Kent, Lambeth, New River, Southwark and Vauxhall, and West Middlesex, and are made up to Sept. 30, 1883.

² These figures are founded on the statistics in Burdett (pp. 829–46; 1376–86), and on recitals in some private Acts.

³ *Ante*, p. 41, n., where the estimate of canal capital is given at something over 19,000,000*l.* Other estimates are largely in excess of

this sum. Burdett (p. 1200) computes it at between 25,000,000*l.* and 30,000,000*l.*

⁴ Some twenty private Acts, dating from 1849, have been passed by Parliament relating to the East Indian Railway, now a State line, and the seven guaranteed lines in British India.

⁵ The Mersey Docks and Harbour Board are alone authorized to raise 18,455,000*l.*; and other public bodies, as at Bristol and elsewhere, have spent considerable sums upon docks, under statute. This outlay is not reckoned above.

⁶ The East and West India, London and St. Katherine, Surrey Commercial, Milwall and Dagenham Dock Companies.

tory authority, by public bodies or as private speculations. All the Metropolitan bridges have been thus constructed; and such of them as were subject to toll have been thrown open for free use by the same means.¹ During the twelve years, 1866-77, more than seventy Acts were passed for facilitating communication by building or improving bridges.² Parliament has also been appealed to for private statutes to sanction the raising of capital or otherwise provide for popular recreation.³ It has been called upon to legislate for numerous companies formed in the United Kingdom to lay submarine and land telegraphs, and to make advances on land at home as well as in Australia, New Zealand, and British America.⁴ It has facilitated the operations of many Colonial banks⁵ and railways,⁶ together with banks at home.⁷ It has also incorporated or otherwise dealt with large numbers of trading and other companies, including coal and iron, mining, and steam navigation companies; and has provided for markets and fairs, ferries and fisheries in every part of the United Kingdom. But excluding the large addition of capital which these statutory concessions would cover, we have in the list just given an authorized capital of more than twelve hundred

¹ 40 & 41 Vict. c. 99; and see 47 & 48 Vict. c. 176, enabling the corporation to establish a free steam ferry east of London Bridge.

² Lords' Index to Local and Private Acts, 1866-77, pp. 1-5.

³ Crystal Palace Acts (16 & 17 Vict. c. 20; 17 & 18 Vict. c. 93; 19 & 20 Vict. c. 117; 32 & 33 Vict. c. 6; 38 & 39 Vict. c. 24; 40 & 41 Vict. c. 117); Albert Hall (39 & 40 Vict. c. 56); Alexandra Palace (40 & 41 Vict. c. 90); Brighton Aquarium (32 & 33 Vict. c. 88; 36 & 37 Vict. c. 26); Scarborough Marine Aquarium (38 & 39 Vict. c. 149).

⁴ Australian Agricultural Company (36 & 37 Vict. c. 30, and several preceding Acts); New Zealand and

Australian Land Company (40 & 41 Vict. c. 95); British American Land Company (4 & 5 Will. 4, c. 15; 10 & 11 Vict. c. 56; 34 & 35 Vict. c. 171).

⁵ Bank of South Australia (47 & 48 Vict. c. 178); Union Bank of Australia (34 & 35 Vict. c. 5).

⁶ Cape Railway Company (18 & 19 Vict. c. 140; 30 & 31 Vict. c. 53; and 36 & 37 Vict. c. 43, an Act to confirm an agreement between the company and the government of the Cape Colony for the sale and transfer of the company's undertaking).

⁷ Bank of Scotland (36 & 37 Vict. c. 99, authorizing an increase of the capital stock); Royal Bank of Scotland (36 & 37 Vict. c. 217).

and sixty million pounds, nine-tenths of which have been invested upon the faith of private legislation by the British Parliament.

Appropriation of authorized capital to authorized works.

All private Bills sanctioning new works are now founded upon estimates of the cost of such works, and these estimates must be proved in evidence. Having thus ascertained how much capital is required by promoters, and upon what objects they desire to spend it, Committees insist upon a strict appropriation of the money to the particular objects specified, unless in special cases, and upon sufficient proof, a discretionary power be given to apply the money to purposes already sanctioned by Parliament. Promoters seeking authority for expenditure, are therefore, in effect, bound by the constitutional rule which requires the Executive Government to apply all money voted to the specific objects sanctioned in supply, and compels them, if they wish to spend more money, to come to Parliament again and prove the policy and necessity for such further expenditure. Before the introduction of a private Bill by any company, Standing Orders in both Houses require the approval of shareholders; but shareholders are often too easily led. The safeguards provided in the Act by Parliament itself are still more valuable. They cannot secure companies against mismanagement; but they do provide for all classes of investors guarantees against unlimited and reckless competition, and also against that "watering of stock," and unscrupulous power of manipulating it for speculative purposes, which have elsewhere so often brought discredit and ruin upon railway and other enterprises. To this control by Parliament is due the high value set by investors upon the securities offered by British railway and other companies,¹ and also the great advantage which those companies themselves enjoy in being able to borrow money at extremely low rates of interest. To the

¹ At its price in December, 1884, the hundred and eighty millions of railway debenture stock yielded to

buyers very little more than an average of $3\frac{1}{4}$ per cent.

same influence is in great part due the successful floating, since 1880, of corporation stock under special Acts obtained by thirty municipalities and local authorities, who have been authorized to consolidate loans and issue stock to the estimated amount of seventy-five millions.¹ Such issues, and that of the Metropolitan Board of Works, could not command so high a price, or even have become marketable at the low interest offered, but for a conviction among investors that Parliament, by its control of private legislation, could and would prevent any reckless outlay of municipal funds, and ensure, as far as statutory provisions can do so, the specific application, for legitimate purposes, of all moneys borrowed.

Year by year the records of Parliament show that nearly every great industrial and social movement during the present century has stood in need of private legislation. As one subject of legislation became obsolete, or the necessity for it was avoided by general legislation, a successor was never wanting. At one time, as we have seen, there was a prodigious activity in the passing of Inclosure and Road Bills. In the beginning of the century, Courts of Conscience and Small Debt Courts were established by numerous Acts in various towns and districts, and continued until these Courts were swept away by Lord Brougham's reforms.² Equal energy was shown during the latter part of the reign of George III., and until the settlement of the tithe agitation, in the passing of some twelve hundred private Acts exonerating particular places from tithes, or commuting them, by allotments of land, corn rents, or compensation in money.³ Before the changes made in the poor law in 1833, there were more than one hundred and fifty local Acts, chiefly passed in the reigns of George III. and George IV., giving powers to local authori-

Successive subjects of private Bill legislation.

Small Debt Courts.

Tithes.

Poor laws.

¹ Burdett, 957. This estimate does not include the stock authorized by Acts obtained in 1884 by the Corporations of Croydon, Leicester, Cardiff, Rochdale, and other towns.

² 9 & 10 Vict. c. 95, a public Act

for the more easy recovery of small debts and demands in England; extended and amended by 13 & 14 Vict. c. 61, and 22 Vict. c. 8.

³ Lords' Index to Local and Personal Acts, 1801-1865, pp. 741-65.

ties for the relief of their poor.¹ In dealing with these and other classes of private Bills, Parliament accumulated an experience of the utmost value, and was able from time to time to modify and correct local provisions upon proof of their failure, and at last found on them a safe basis for general legislation. When these subjects dropped from the statute-book, their places were taken by the great industrial undertakings which have been successively noticed. In this way, from 1801, the date of the Act of Union, to the year 1884, inclusive, nearly 18,500 local, personal and private Acts have received the Royal Assent, almost twice the number of public Acts which became law during the same period.²

Industrial
undertakings.

Number of
private Acts,
1801—1884.

Private Acts
not printed.

Of these labours, not even the statute-book contains a complete record, for nearly two thousand of the Acts thus passed are not to be found in it.³ It may be hoped that the foregoing sketch, imperfect as it necessarily is, will give some information, not otherwise accessible in any connected form, of the work which has been silently carried on for so many hundred years, beyond reach of "the fierce light" which, during much of this time, has beaten upon public legislation. In the succeeding chapters an attempt will be made to trace the origin of private Bills, the control at one period exercised over them by the Crown, the nature of the jurisdiction transferred to Parliament, the means which have from time to time been employed by Parliament for investigating such Bills, and the various changes which have been made in its procedure.

¹ See as to some of these powers, *post*, chapter on Standing Orders.

² Lords' Index to Local and Personal Acts, 1801—1865. Appendix A. (*post*) gives the number of public and private statutes for each year between

1800 and 1884. Of public Acts there were 9,556; of private, 18,497.

³ Appendix A. Since 1800, the exact number of private Acts not printed has been 1,937.

CHAPTER I.

PRIVATE LEGISLATION : ITS RISE AND DEVELOPMENT.

By "Private Bills" are commonly understood all Bills affecting the interests of individuals or particular localities, and not of a general public character. In this sense, to distinguish the two classes of legislation, the term is now used in the Standing Orders of both Houses. Before the year 1798, all Acts of Parliament were so classed. Public Acts, however, then included those which, though relating purely to local affairs, were declared to be public; a special clause to that effect providing also that the Act should "be judicially taken notice of as such by all judges, justices and others, without being specially pleaded." These local Acts were printed along with the public general Acts, and the bulk of the statutes concerning the whole community was thus unnecessarily increased by a variety of enactments affecting only particular localities. The private Acts were not usually printed and related chiefly to personal matters. In conformity with joint resolutions passed by the two Houses of Parliament in 1796,¹ statutes passed in 1798 and subsequent Sessions were divided into three classes:— (1) Public General Acts; (2) Local and Personal Acts declared public and to be judicially noticed; (3) Private and Personal Acts. The latter were not ordered to be printed. By the resolutions of 1796 the King's printer was directed to class the public general statutes and the public local and personal statutes of each Session in separate volumes, to number the chapters of each class separately, and also to print one general title to each volume, together with a general table of all

"Private Bills" and Acts: the term defined.

Joint resolutions of 1796.

¹ 52 Com. Journ. p. 413.

Re-classification in 1814.

the Acts passed in each Session. In the year 1814 another change of classification was made, by the division of all statutes after that period into four classes:—(1) Public General Acts; (2) Local and Personal Acts declared public and to be judicially noticed; (3) Private Acts printed by the Queen's printer, copies of which may be given in evidence; and (4) Private Acts not so printed.

Local and Personal Acts.

While "Private Bills" have the general meaning which has been indicated, the term has also a limited meaning, and in its strict sense is now confined to such private Bills as expressly provide that they shall not be deemed public. Acts containing no such provision are, by a general law,¹ taken to be public Acts for judicial purposes. In the statute-book, down to the year 1868, these quasi-public Acts were placed under the head of "Local and Personal Acts," following herein the nomenclature adopted in 1814 and still contained in the Lords' Orders:² although personal were, in fact, to be found only under the separate head of Private Acts. Since 1868 a simpler and more accurate division has been adopted:³ that of Local and Private Acts. In the restricted sense of the statute-book, therefore, private Acts are Acts each of which in its last section bears evidence of its private character, and all of which are passed for purely personal objects, such as for authority to deal with trust estates, for naturalization, to reverse attainders, or to establish the validity of letters patent. These personal and private Acts are now very few in number, but are printed, with rare exceptions,⁴ in a separate volume, with a separate numbering

Now termed Local and Private Acts.

Private Acts separately printed.

¹ 13 Vict. c. 21, s. 7.

² S. O. 1 and 149 (1885).

³ This division had been anticipated in 1857 in the Statutes at Large, an edition issued by the Queen's printers, with notes and references by Sir George K. Rickards.

⁴ In the five years 1879-83, the whole number of these private Acts was thirty-four, of which all but six

were printed. In the five years 1839-43, they numbered 292, of which ninety-four were not printed. This considerable decrease between the two periods is due to greater facilities given meanwhile by general legislation to dealings with trust estates, and also to the operation of the Inclosure, Naturalization and Divorce Acts.

of chapters. There are thus three authorized collections of statutes:—(1) Public General Acts; (2) Local Acts; (3) Private Acts.¹ Apart, however, from any technical distinction, the term private Bills will conveniently, and with sufficient accuracy, cover all Bills not included in the first of these classes.

A few exceptions occur to the grouping of private Bills just mentioned. Thus, the rule that Bills affecting a particular locality are private Bills is departed from in the case of measures relating to the whole Metropolis. These are frequently dealt with as public Bills: “the large area, the number of parishes, the vast population, and the variety of interests concerned, constituting them measures of public policy rather than of local interest.”² By a Standing Order of the House of Commons,³ all Bills promoted by the Metropolitan Board of Works, containing powers to raise money, must be introduced as public Bills, and after the second reading are referred to a Private Bill Committee. Measures relating to the Metropolis are sometimes treated as “hybrid” Bills, so-called because they partake both of a public and private character: public, because of the large interests concerned; private, because they also interfere with private property or rights. Hybrid Bills, therefore, though introduced and passing through their various stages as public measures, must comply with Standing Orders and be disposed of in Committee, in case of opposition, as private Bills. Committees on hybrid Bills, however, correspond with their double character; the members constituting each Committee are

Metropolitan
Bills.

Hybrid Bills.

¹ The three divisions are distinguished as follows:—Public Acts have their chapters in Arabic characters, as 47 & 48 Vict. c. 10; Local Acts, in Roman numerals, as 47 & 48 Vict. c. x.; Private Acts, in italicised Arabic figures, as 47 & 48 Vict. c. 10. For shortness, the Arabic numeration has been adopted throughout this volume for all classes of Acts.

² May's Parliamentary Practice, 9th ed., pp. 745–6, in which numerous instances are given of metropolitan Bills so distinguished. Some exceptional Bills concerning Edinburgh and Dublin and other places have been similarly dealt with (*ib.*, pp. 749 *et seq.*).

³ No. 194.

more numerous than those serving upon a private Bill, and they are nominated in part by the House and in part by the Committee of Selection. Bills to confirm Provisional Orders, though nominally public, are referred to the Examiners, and any one of the Orders, if opposed, is treated as a private Bill for the purposes of investigation in Committee,¹ the progress of the public Bill being stopped until this investigation is concluded. The private nature of all Provisional Order Confirmation Acts is further shown by the modern practice of including them in the collection of local statutes. Their transfer from the public to the private collection was made by the Lord Chancellor's direction in 1868, and the bulk of the annual volume of public statutes has thereby been considerably reduced. Lastly, a small class of quasi-public Acts, such as those to clear up doubts about the validity of marriages celebrated in certain places of worship, are now also excluded from the public, and printed among the local statutes.²

A common origin may be assigned to public and private Bills. Both had their rise in the ancient petitions to the Crown for redress of public or private grievances.³ All trace of this origin has disappeared from public Bills, which are now introduced without question in the Lords, and by leave of the House, at the instance of any Member, in the Commons. Private Bills, however, with some exceptions, can only be brought into either House upon petition from the promoters, and thus retain traces of an ancient form which has in their case survived for well nigh six hundred years.⁴

¹ See Standing Orders, House of Commons, Nos. 72, 89, and 151.

² 47 & 48 Vict. c. 1 (An Act for legalising marriages heretofore solemnized in the district church of Stopsley, in the parish of Luton, Beds.).

³ Report on Public Petitions, 1832, App. 3; evidence of Sir Francis Palgrave.

⁴ Petitions against public Bills

are the only survival of the old form. In the case of private Bills not only opponents but promoters must proceed by petition. By recent practice, local Bills may be promoted in the Lords without petitions; for personal Bills, petitions are still required there (Standing Order, No. 150), as they are in the Commons for private Bills of all kinds (ib., House of Commons, 193).

Provisional
Order Confir-
mation Bills.

Quasi-public
Acts.

Origin of
private Bills.

At the opening of each Parliament the Commons appointed their Committee of Grievances; while in the Lords, from 6th Edw. I. (1278), if not before, Receivers of Petitions were named, together with Auditors, afterwards called Triers. The Receivers probably examined petitions to see that they complied with the proper forms, were properly addressed and respectfully worded. The Triers were appointed "pur oyer et trier," or "pur responder al petitions;" "to try out whether the remedies sought for were reasonable and fit to be propounded."¹ The first Receivers of petitions were the Masters in Chancery, who from the most ancient times attended the Peers in Parliament and acted as messengers between the two Houses. Afterwards some of the judges served with the masters as Receivers. None of the Receivers were Lords of Parliament, while none but Lords of Parliament or persons summoned to the Upper House as assistants were appointed Triers. The judges, who were so summoned, occasionally acted as Triers; and the Lords of Parliament performing these duties were always authorized to call to their aid the Chancellor and Treasurer in cases of difficulty.

Receivers and triers of petitions.

Masters in Chancery.

Elsynge, who was Clerk of the Parliaments in 1625, devotes one chapter of his "Treatise on the Manner of Holding Parliaments in England"² to a description of these ancient offices. The persons holding them, he says, were at first nominated by the King and Council before the Parliament assembled, but after 29 Edw. III. the cause of summons was always

Elsynge's "Manner of Holding Parliaments."

¹ Parliamentary History, 369; Dwarris on Statutes, 27.

² It appears to have been written in 1624-5, and was first printed in 1660, some years after his death. From the author's position and evident research, considerable authority must be allowed to this work. The original is in the Harl. MSS.; my references are to an edition corrected by the author's manuscript French spelling, the author's manuscript the words in them 1768. His note at the end of the book is—"Col-

lected for mine owne instruction and learninge, with noe intent to publishe the same unto any." He opens a second book with the marginal note—"Begunn, but God knows when I shall finish this booke." In fact, it does not appear to have been finished. The author's son, to whom the authorship of the treatise is sometimes in error attributed, was Clerk of the House of Commons in the time of Charles I.

Parliament of 12. declared first. In the Parliament held at York, 6 Edw. III., it was agreed by the King and his Council that petitions be received as in the last Parliament. Then the record names the time for their delivery, says they are to be handed to the Clerk of the Parliaments and others, and appoints the Archbishop of York, the Bishop of Ely and other Prelates and Lords as triers.¹ In 15 Edw. III., at the Parliament held at Westminster, after proclamation made in Westminster Hall against wearing of weapons, riots and unlawful games near the Parliament House:—"Item, un crie fut fait" that whosoever wished to petition the King and his Council should do so before the following Saturday, and then the receivers and triers are named.² So in the year 1363, according to the Parliament Roll of 37 Edw. III., after the cause of summoning the Parliament is set forth, with the names of the receivers and triers, appears the following entry:—"Et outre le dit Roy voet que si nul se sent grevez, mette avant sa petition en ce Parlement, et il en avera convenable respons; et sur ce ad assignez ascuns de ses cleres de la Chancellerie receivours des ditz petitions."³ Again, in 40 Edw. III., after the Lord Chancellor's speech reciting the cause of summons, the King's will is declared to be "que chaseun qui se sent grevez mette devant sa petition a ces qui sont assignez de par luy de les recevoir et aussi de les trier."⁴

pointed by g or Lord Chancellor. Receivers and Triers of Petitions for the relief of grievances were appointed by the King, or by the Lord Chancellor on his behalf; the Triers had power to call to their aid, when needful, the King's Serjeants for English petitions, the Justice and Treasurer of Ireland for Irish petitions; while the Archbishop of Canterbury, the Chancellor, the Treasurer, and the Chief Justice were "to be with the said triers when they may intend it and need shall be."⁵

¹ 2 Rot. Parl. 68. Prelates are not now appointed as triers.

² Ib. 126.

³ Ib. 275.

⁴ Ib. 289.

⁵ Elsynge, 2nd ed. (House of Commons, 193).

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ding
in the

ate Bills of all
ause of Commons, 193).

The first entry in the Lords' Journals gives Chancellor Warham's speech at the opening of Parliament on January 21st, 1509, after which the Archbishop-Chancellor directed the Commons to choose a Speaker; and then—"Ut justitia celerius, commodius et diligentius, querelas et petitiones porrigere volentibus, perhiberi et ministrari posset, certos Receptores, Discussores, et Examinatores, sive Triatores, earum petitionum constituit et assignavit, in formâ subsequenti." From this entry in Latin, which is the language usually employed in the early journals of the Lords, there is then an abrupt change to the old Norman French:—"Recepueurs des petitions de Angleterre, Irland, Gales, et de Scoce, Sir John Yong, Sir Roger Lupton, Sir John Taylor. Recepueurs des petitions de Gascoigne et des aultres terres et paiis de par de la meere et des isles, Sir Nicholas West, Sir William Lychfyld, Sir Jak' Whetstons, Sir Ric. Rawson. Et ceux q'voudront delivrer leurs petitions bailleront en de dens sept jours prochane-ment ensuivant. Et sont assignes Triours des petitions de Angleterre, Irland, Gales, et pareilment de Scoce, L'Archeveque de Canterbury, le duc de Buckingham, l'evêq de Winchester, l'evêq de Exeter, l'evêq de Rochester, le count de Shororsbury, le count de Surrey, le abbé de Westminster, le abbé de Bury Seynt Edmund, le abbé de Abbyndon, le seigneur Herbert, le seigneur Hastyng. Tous ensembles, ou cinque des prelatz et segniors avantditz au moins, appellez à eulx le chancelier et tresorier, ou deuls aultres officiers du roy, comme il sera necessaire, et tiendront leur place en la chambre du Chambel-^{len.}"¹ In like manner the triers of petitions from Gascony and parts beyond the seas, with power to call to their aid the Chancellor and treasurer, and also the King's serjeant, were to meet in the treasurer's chamber.

Parliament of 1509.

Receivers.

Tryers.

Places of meeting.

Unsuccessful motion in

¹ 1 Lords' Journ. pp. 1—2. Here and elsewhere the old Norman-French spelling has been preserved; the words in their ancient form, varied in successive generations, have a quaintness and interest of their own.

1740 to dis-
continue
appointment.

Lords to omit future entry in the journals of any appointment of receivers and triers for Great Britain and Ireland : but, after debate, the motion was negatived.¹ Though their functions have long since ceased, these officials are still appointed at the commencement of every new Parliament, in the same Norman-French which was used more than six centuries ago. Even petitions from "Gascony" are still provided for; "other lands beyond the sea and the isles" are words with a significance which the ancient receivers and triers would have regarded with incredulity.

Receivers and
triers in 1837.

On the Queen's accession in 1837, we find these appointments duly chronicled in the Lords' Journals on the opening of Parliament. The receivers for Great Britain and Ireland were "Messire Nicholas Conyngham Tyndal, chevalier et chief Justicer de Banc commune; Messire James Allan Park, chevalier et Justicer; Messire William George Adam, ecuyer." For "petitions de Gascoigne et des autres terres et pays de par la mer et des isles," the receivers were Baron Abinger and two others. There was the usual notice "et ceux qui veulent delivre leur petitions les baillent dedans six jours prochainement ensuivant." The triers of petitions from Great Britain and Ireland were the Duke of Norfolk and twenty-six other peers; from Gascony and places beyond the seas the triers named were the Duke of Brandon and twenty-three other peers. And it was notified that "touts eux ensemble, ou quatre des seigneurs avant-ditz, appellant aux eux les Serjeants de la Reyne, quant sera besoigne, tiendront leur place en la chambre du Chambellan."²

Address of
petitions.

In the reign of Edward III. petitions were generally addressed "au nostre seigneur le roy et a son conseil:" some to the King's council alone; occasionally to the Chancellor, as in a petition "au chancelier nostre seigneur le roy, monstre"³

¹ 25 Lords' Journ., p. 577, January 28, 1740.

² 70 Lords' Journ., pp. 12, 13, November 20, 1837.

³ A petitioner still uses the modern equivalent of this word when, in his "humble" petition he "sheweth" his complaint.

A., le povre priour de Tackley;" more rarely to individual Lords of Parliament, as in a petition "al tres honorable seigneur Monsr. William de Clinton suplie I. de Tavyle, merchant du Portugal," touching a robbery at sea. Lord Clinton was thus chosen, no doubt, as being then High Admiral and Constable of Dover.

By the King's Council in these addresses of petitions may have been meant the High Court of Parliament, constituted as it originally was of peers, prelates, and abbots, sitting together with the Commons.¹ Or it may have referred only to the Lords of Parliament.² Elsynge leans to the opinion that the King's Council included only those Lords of Parliament who were of the King's Privy Council. But it is to be borne in mind that these petitions set forth the grievances, private or quasi-public, for redress of which, according to the great Charters, the time and place were appropriate; and that though the express consent of Parliament was seldom required to the remedy granted, this consent was in certain instances recognized as necessary. In the reign of Henry IV. few petitions were directed to the

Petitions to
the King and
his Council.

¹ Although in ancient times both Houses generally sat together in one room, the Commons always had a place for their consultations apart from the Lords, and then a Speaker was necessary, to avoid confusion of speech and argument. (Elsynge, p. 155.) The period when Lords and Commons met separately cannot be fixed with precision. It is supposed to have occurred during the reign of Henry III. or in that of Edward I., about the year 1289. Hallam thinks that "the Commons may have sat at the bottom of Westminster Hall, while the Lords occupied the other end." Elsynge cites 5 Edward III. to show that, after the cause of summons had been declared to the Lords and Commons together, the latter "were willed to

withdraw themselves to their ancient place in the chapter-house of the Abbot of Westminster, there to treat and consult among themselves" (p. 104). Elsewhere he cites 14 Edward III., when the cause of summons was declared to the Lords and Commons altogether touching an aid for the king. "They considered thereof and joined in grant of the subsidy, upon condition to have their petitions granted. A joint Committee of the Lords and Commons are appointed to sit from day to day upon the said petitions."

² From the reign of Edward I. until the last year of the reign of Richard II. (A.D. 1399), no petitions have been found which were addressed exclusively to the Commons. (May, p. 607.)

King and his Council. Some were directed to the King alone, some to the Lords alone, and some to the Commons.

Present style
of private
Bill petitions.

Petitioners now no longer appeal to the Crown. According to the House in which a Bill happens to be, private, like public petitions, are addressed, "To the Right Honourable the Lords Spiritual and Temporal," or, "To the Honourable the Commons of the United Kingdom of Great Britain and Ireland," "in Parliament assembled." Then come the words, "The humble petition of" [*name and description*], "Sheweth," followed by a statement of the grounds of petition, and ending with a prayer, usually to this effect when presented against a Bill:—"Your Petitioners therefore humbly pray your (Right) Honourable House that they may be heard by their counsel, agents, and witnesses in support of the allegations of this petition against the preamble, clauses, and provisions of the Bill, and in support of other clauses and provisions for their protection, and that the Bill may not pass into a law as it now stands, and that your Petitioners may have such other relief in the premises as to your (Right) Honourable House may seem meet. And your Petitioners will ever pray, &c." The signatures follow, and, if from a Corporate body, the petition must bear the common seal.

Time limited
for petition-
ing.

In all the Parliament rolls which record the appointment of receivers and triers a time was limited for the delivery of petitions, seldom more than six days after the first meeting of Parliament, and as many of the petitions were dealt with as time would permit during the Session. There seems to have been a division of labour among the triers, who had several places to meet in, and were often put in mind by the Chancellor to attend. Petitions generally proceeded from private individuals, and prayed for redress which the Courts of Common Law had failed to give, or had no power to give. Sometimes they were presented from towns or persons having a common interest. More rarely they set forth grievances suffered by the whole community. There are many examples

Nature of
early peti-
tions.

of private petitions for the relief of wrongs done, or for the King's grace. Among them may be cited :—¹

(Anno 1 Edw. 3.) *Petitio B. de Badlesmere*, for restitution to lands and charters taken violently from him; *Henrici com. Lanc.*, for delivery of deeds; *Johannis de Vyenne*, to be restored to his office; *Thomæ de Northrope*, to be allowed his costs laid out in keeping the King's castle of Bromham; *Will. de la Zouche*, for reversal of an outlawry for murder; *Thomæ de Berklie*, for his liberties of weyf and stray, &c., seized by the King; *ballivorum et proborum hominum ville de Norwich*, to be allowed 200*l.*, which King Edward II. had borrowed of them; *Luciæ Multon*, to have justice in a suit begun in the King's Bench against the King's father for certain manors; *Eliz. Multon*, against delay of justice; *Fran. Masse*, and other merchant strangers, touching a wrong done them in France by merchant strangers who are now in England; *G. de Lucer*, merchant of London, for redress touching a depredation in Lombardie; *H. S.*, against a piracy by four of the French ships. These private grievances, so far as they can be said to have depended for redress on the assent of Parliament at all, were rather instances of purely personal Bills. Sometimes, however, as in the first Edw. III., there were petitions from inhabitants of a county or a city, as, for example, "*Petitio hominum Westmerland, quod exonerentur de puturâ*"² *balivorum regis*; from the Cinque Ports, for an explanation of their charter; from the dyers of London, against false fulling of cloth.

In the year 1767 six volumes were printed by order of the House of Lords entitled "*Rotuli Parliamentorum ut et Petitiones et Placita in Parlamento.*" These rolls contain various Parliamentary proceedings from 6 Edw. I. to

Rotuli Parliamentorum.

¹ *Elsynge, 273 et seq.*

² *Puture* was a custom claimed by keepers in forests, and sometimes by bailiffs of hundreds, to take men's meat, horse's meat, and dog's meat, of the tenants and inhabitants within

the perambulation of the forest, hundred, &c. The land subject to this custom was called *terra putura*.—*Wharton's Law Lexicon*, 6th ed.; 4 *Inst.* 307; *Cowel*.

19 Hen. VIII. The private petitions which came before Parliament must have been numerous. There are seventy in the year 1278 ; and these are only a portion of the whole number presented, for in the Record Office are many original petitions in Parliament, and other proceedings, from the time of Edw. I., which are not noticed in the rolls. The early petitions are in Norman-French or Latin ; the answers, which follow, are given always in Latin. They generally remit suitors to the common law or chancery : but some petitioners receive other answers, as when the community of Cistercians humbly pray the King of his grace to give them relief in respect of some alleged breach of their privileges, the reply is :—"Rex non concedet eis aliquod novum, sed vult de cetero utatur sicut retroactis temporibus uti consuevit."¹ Previous to Edw. III. the contents of the Rolls are miscellaneous and irregular. From 13th Edw. III. to the end of the reign of Edw. IV. their contents are generally uniform. They begin by stating the time of the opening of each Session, by declaring the causes for which the Parliament was summoned, and the appointment of receivers and triers of petitions. Then follow in their order grants of aids and subsidies to the King, and other proceedings in the several matters before Parliament. All petitions relating to public matters are entered at large, together with many of the petitions or bills presented by private persons, and the answers to both.²

Petitions
referred to
Committee,
1399.

Great Yar-
mouth.

From these records it appears that petitions were sometimes specially referred to Committees of the Lords instead of to the triers. Ten petitions³ in Norman-French, chronicled in the year 1399 (1st Henry IV.), were thus treated. They

¹ 1 Rot. Parl. 4.

² Statutes of the Realm, Introduction to, App. E., p. 65. The Rolls record the proceedings of Parliament between the years 1278—1503. In 1509 the Lords' Journals begin ; those of the Commons in

1547. We have thus an almost unbroken record of proceedings in Parliament for more than six hundred years.

³ Three of these cannot be deciphered.

were chiefly private petitions, from Lincoln, Great Yarmouth, and other places, asking for relief from imposts on the ground of poverty. The Great Yarmouth petition begins:—"A très reverent, très gracieux, et très souveraine Seigneur, nostre Seigneur le Roi, et son très noble conseil en cest present Parlement, supplient les povres lieges les burgeys et communes et vos povres tenauntz de votre ville de Grant Jernemuth en la countee de Norfolk." They allege that by reason of the shoaling of their port, vessels can no longer enter without danger, and so go to other ports, and the petitioners are too poor to amend this defect. They pray the King to consider that their town is on the coast, and so is of great national importance ("est la frontüre et la chef de tout la pays"); and ask for relief from imposts, "en salvacion et relevement de votre ville susdit, pour Dieu et en oevre de charite."¹

Another private petition is addressed, not to the King and Council, but to the lower House:—² "As honorables et sages Communes d'iceste present Parlement supplie tres humblement un povre homme Robert atte Mulle de Guldeford." This petitioner had been found guilty of appropriating treasure-trove in a house at Guildford, and had been condemned to pay a ruinous sum. Whereupon, he says: "Plese à vos tres sages discreciouns avoir compassion, et considerer coment le dit suppliaunt fust condempne en la dite somme, ou il de ceo rien ne fust coupable, et sur ceo mettre voz graciouse aides a dit suppliaunt en iceste present Parlement, que notre dit seigneur le Roy de sa grace especial . . . estre gracieux a dit suppliant, pour l'amour de Jesu, et en oevre de charite." All the private petitions have this pitiful ending. These, and a general petition from the Commons, are referred to a Committee, in the following reply:—

Robert of the
Mill, at
Guildford.

"Fait a remembrer que celles des dis peticions qui sont

Committee
nominated to

¹ 3 Rot. Parl. 447.

² Ib., 448. In the reign of Henry IV. many petitions were addressed to the Commons, and were generally referred to Committees of Grievances and other special Committees until

after the Commonwealth, when they were considered, both in the Lords and the Commons, by the whole House, and only referred to Committees in exceptional cases. (May, 607, 608.)

hear petitions.

annexes ensemble feurent envoiez au Roy par les Communes en Parlement, en priant au Roy de sa grace q'il plerroit tendrement prendre a coer la matiere compris en ycelles, et faire gracieuse remedie en celle partie. Sur quoy le Roy, entendues mesmes les petitions, de sa grace, par assent du Parlement, ad comitis a certains des seigneurs, c'est assavoir, l'ercevesque de Canterbirs, le Duc de Lancastre, l'evesque de Wyncestre, l'evesque de Sarum, le Count de Rutland, le Count Mareschall, aveq les officers du Roy, pour trier, regarder et examiner les ditz petitions, de la quinzieme de Pasque proschein, et outre ceo de faire par auctorite du Parlement recompence et autre remedies resonables en ce cas . . . ceo qui lour semblera mieux par lour bone discretion."¹

The first mention of the machinery for determining petitions occurs in 6th Edward III., when, after the names of the receivers and triers are given, the record says it was "agreed that the petitions which shall be tried and determined by the aforesaid prelates, barons and justices, so appointed triers, shall be delivered over into the Chancery under their seals, or under the seals of two or one of them at the least; and that the rest of the petitions shall rest under the seals of the said triers in the custody of the clerks until the next day, and so from day to day; and that the petitions which are to be tried and determined *coram rege* be tried before his Majesty, calling unto him whom he please; and that those petitions shall remain under the seals of the auditors until they be reported before the King."²

Petitions:
how dealt
with.

As the matters of complaint differed materially in kind and degree, the mode of dealing with them also differed. Some petitions, supposed to touch the Royal prerogative, were disposed of *coram rege*, by the King and his Council; others, which complained of a denial of justice

¹ 3 Rot. Parl. 448. And sometimes the Lords of the Council were authorized to hear and determine petitions left unanswered by Parliament at its dissolution, calling to

them the justices and others versed in the law. (4 ib. 506.)

² 2 Rot. Parl. 68, A.D. 1332; Elsyng, 277.

through want of jurisdiction in the Courts of Common Law, or through harassing delays in administering justice there, were referred to the Chancery, for summary or equitable relief; others again, and these included petitions of local and personal as well as general interest, were, if assented to by the King, put into formal words by the judge at the end of each Parliament and were entered upon the statute rolls. If they were petitions of grace, the Commons sent them to the Upper House with this heading: "*Soit baille as seigneurs pur parler a roy,*" or "*Soit parle a roy par les seigneurs.*" The others were sent up to the Lords without any direction; and here, says Elsyng, "first began the private bills now exhibited in Parliament."¹

Private suitors gradually encroached so seriously upon the time and attention of Parliament that at a very early period of Parliamentary history it was found necessary to transfer petitions of this nature to the ordinary tribunals. An ordinance was therefore passed in the year 1280 reciting that the people who came to Parliament were often delayed and disturbed, to the great grievance of them and of the Court, by the multitude of petitions laid before the King, the greater part whereof might be despatched by the Chancellor and the justices. It was therefore provided "that all the petitions which concern the seal shall come first to the Chancellor; and those which touch the exchequer to the exchequer; and those which concern the justices and the law of the land to the justices; and those which concern the Jews to the justices of the Jews;"² so that the King and his council may, without the load of other business, attend to the great business of the realm, and of other foreign countries."³ The proceedings on private bills have always been, and still continue, of a mixed judicial and legislative character. But an attempt was thus made to impress upon petitioners that, for the

Ordinance of 1280, referring private suitors to the tribunals.

¹ Elsyng, p. 287.

(Manning's Serjeant's Case, 279.)

² Sometimes styled "*Justiciarii ad custodiam Judeorum assignati.*"

³ 8 Edw. I., cited in Dwaris, 28.

redress of private wrongs, they must resort to the ordinary tribunals, and that their applications to Parliament, or through Parliament to the King, must be confined to matters for which the proper procedure was not judicial but mainly legislative. This ordinance, however, does not seem to have had much effect. Suitors appeared to have greater faith in the ordinary tribunals when causes were remitted to them by Parliament; and long after the year 1280, most of the petitions coming before Parliament continued to be those which, regarding the King as the fountain of justice, prayed for such redress as might properly be given by the King's Chancellor or justices. Such petitions were accordingly still remitted to the Courts having cognizance in each case, and were endorsed "*Sequatur ad communem legem*," "*Mittatur ista petitio in cancellarium et ibi fiat justitia*," or with similar answers, according to the opinion of the hearers or triers that a remedy was to be had at common law or in equity.

Petitions
heard *coram*
rege.

In 36 Edward III. the Commons protested against the practice of setting apart the personal petitions endorsed *coram rege*, and of omitting to give redress thereupon. They accordingly presented a Bill, reciting that certain Lords were assigned to hear petitions, and were accustomed, if these concerned the King, to endorse them *coram rege*, "and so nothing is done." Then they prayed that these petitions "may be viewed before the Lords, and by advice of the Chancellor, Treasurer, and others of the King's Council, answered and endorsed, in manner as right and reason demand (*en manere come droit et reson demandent, pur Dieu et en oeuvre de charite*); and this before the departure of the Parliament." To this prayer, which was no more than one that Parliament should not separate before redressing grievances, the King assented—"Le Roy le voet."¹

Petitions of
grace.

Among the petitioners in the reign of Richard II., Robert atte Mulle and Alice his wife² pray the King's

¹ 2 Rot. Parl. 272; A.D. 1302.

² *Ante*, 279.

pardon as having been wrongfully condemned for taking 700*l.* of treasure-trove at Guildford. To this the answer is, "Let them sue to the King, for this is no petition of Parliament." So in the 1st Henry IV., the citizens of Lincoln prayed to be relieved of their fee-farm rent, 180*l.* a year, which, as they declared, they were unable to pay. The answer here was, "Let them sue to the King, who will be gracious;" in other words, an assertion of the prerogative, and a denial that this was a petition properly beginning with the Commons.¹

The first petitions on record, endorsed "*per auctoritatem Parliamenti*," appear to be two which were presented 15th Richard II. (A. D. 1391), and addressed, "*A nostre tres excellent et tres gracioux seigneur le Roy et aux tres nobles seigneurs de Parlement*." One was from the Abbey and Convent of Abingdon; the other from Alice de la Maire. Each involved a claim to lands. The answer endorsed on each was: "Let this petition be delivered in the Chancery, and let the Chancellor, by authority of Parliament, cause the parties to come before him in the Chancery; and there, the matters comprised in this petition being diligently viewed and examined, and the reasons of the one part and the other heard, let that be done, by authority of Parliament, which right and reason, and bone foy et bone conscience, require in the case."²

Petitions
per auctorita-
tem Parlia-
menti.

Many other petitions were referred to the Chancery about this time, if they could not be determined by the common law; and most of these petitions contained the same words—"by authority of Parliament." The petitioners may have resorted to Parliament with good reason, because under the common law they had no remedy or because the ordinary course of justice was obstructed. On the other hand some of these petitioners may have wished to tire out their adversaries by protracting litigation, or to snatch an unfair advantage which the common law denied them. "Right and reason," as well as "good

Reference to
Chancery.

¹ Elsynge, 294.

² 3 Rot. Parl. 297; Elsynge, 295—6.

faith and conscience," might be on the side of their adversaries, who might naturally demur to an attempt to oust the common law and refer the cause to a new jurisdiction in which, as was quaintly said in more modern times, the equity administered varied with the length of each Chancellor's foot. The Commons therefore in the eighth year of Henry V., sought to procure an assurance that, except with their assent, no private petitions should be so referred, and causes thereby taken away from the decision of the ordinary tribunals. The Bill they drew up began:—" *Item*, pray the Commons, in this present Parliament, if any man sue a Bill or Petition endorsed with these words 'by authority of Parliament,' " (and then came what would now be called the operative part) "that no man to such Bill or Petition, unless the assent or request of the Commons be endorsed, be bound to answer contrary to the laws of the realm of England." The King must have regarded this step by the Commons as an interference with his prerogative, and put aside their appeal with a " *Soit advisee par le roy.*"¹

Examples of
answers to
suitors' peti-
tions.

Among the recorded answers to petitions not requiring the assent of Parliament are the following:—If the petition were for wrong done by a private person: "Let him have a writ in the Chancery to inquire thereof, and thereupon fiat justitia." If for allowance of anything in a petitioner's account: "Let him have a writ in the Chancery directed to the Treasury and Barons of the Exchequer, to view and examine the same, and thereupon to make the allowance." If for delivery of charters or the like, in the King's custody: "Let him have a writ in the Chancery to the Treasurer and Barons of the Exchequer, to make search," &c. If for reversal of an outlawry, or the like: "Let him have a writ in the Chancery to the Justices of the King's Bench, to cause the record to be brought before them; and if there be error to reverse the same." If for piracy or any other wrong done by merchant strangers in foreign dominions: "Let the

¹ 4 Rot. Parl. 127, A.D. 1420.

petition be delivered in Chancery, and upon hearing of the cause, let justice be done *secundum legem in tali casu usitatam*.”¹

When the remedy pointed out by the triers was through the Chancery, that Court had jurisdiction upon a reference of the cause. Grievances which were thus capable of investigation and redress in Chancery were no doubt finally disposed of there, and the petitions were not returned to Parliament, so that neither House was called upon for its assent. But petitions which seemed to the triers to be beyond the strict province of the judicature, and though apparently involving questions of law, disclosed matters deemed to be of importance to the State, were referred to Parliament for discussion and treatment. One such case is recorded in 1st Edward III., when the abbot of Thornton-on-Humber petitioned respecting certain lands recovered by him in the King's Bench, and of which, after entering into possession, he was disseised by Hugh Despencer. The answer in that case is : “Recordum et processus predicti monstrentur in Parlamento, ita quod jus inde fiat.” An earlier case arose in the reign of Edward I. Two petitioners named Corbet claimed the castle of Tremington and other lands which Roger de Vautort, whose heirs they were, was alleged to have given to Richard, King of Almaine, the Earl of Cornwall. The redress prayed for in this petition was long delayed. It was discussed in Parliament in the following reign, 12th Edward II. (A.D. 1319), and it was not till 1st Edward III. (1327) that the triers returned the following answer : “Soit ceste petition mande par brief du grant seal a Sire G. Lescroop, justice du bank nostre seigneur le roy, et soit mande a luy par mesme le brief, qil face regarder tout le proces dont mention est fait en cest petition, et appelez eux, qui sont appeller, a fynal discussion de la dite besoigne, sans qil ne ayle mye au jugement sans le roy.”²

Petitions
discussed in
Parliament.

¹ Elsyngge, pp. 279, 280.

² Ib. 280, 281 ; 2 Rot. Parl. 438.

Petition of
Elizabeth de
Burgo.

Another petition, upon a matter affecting private rights, was dealt with in full Parliament. It was presented by one Elizabeth de Burgo, complaining of a recognizance forced from her by Edward II., the effect of which was that she should not receive any of his enemies, or (and this was doubtless of more importance) marry or sell any of her land without his licence. A copy of this recognizance was annexed to the petition. The triers' answer was: "*Parceque tesmoigne est que le dit escript est en la garderobe, eit brief en chancellerie au gardeyn de la garderobe de fair venir le script devant le conseil sans delay.*" A writ was accordingly issued from the Chancery to the clerk of the privy seal, who was master of the wardrobe, commanding him to bring the original recognizance "*coram consilio nostro in præsentî Parlamento.*" It was accordingly considered by the Lords and Commons in full Parliament, and adjudged by them to be "against the laws of the land and all reason." It was, therefore, cancelled and condemned, "*per agarde del Parlement,*" and delivered over to the petitioner.¹

Staunton's
Petition,
A.D. 1341.

It was supposed to be necessary that the Commons should join with the Lords in cancelling the recognizance of Elizabeth de Burgo, in order to avoid and destroy the effect of a record. Whatever the reason, it is an early proof of the recognition of the necessity of legislative sanction, though wanting the complete form of a private Act, to the remedy prayed for in one of these petitions. Another similar case was the petition in which G. de Staunton, in 14th Edward III., demanded judgment in a cause depending in the Court of Common Pleas. This cause raised such difficult points of law that "the judges did forbear to proceed." The petition was read and its prayer assented to in full Parliament; and thereupon "the Lords of Parliament directed the judges on which side to give their judgment."²

¹ 2 Rot. Parl., App. 440.

² Elsynge, 283, who distinguishes between this case and that last cited,

inasmuch as the Commons did not join the Lords in directing the judges. But the legislative act, if

Considering the tenor of the answers given during the reigns of Edward I.—III., Elsynge comes to the conclusion that all matters of importance were discussed in open Parliament, no matter what answers the triers had prepared, though the Commons were only consulted upon those answers which could not otherwise legally pass, *i. e.*, which required some more or less formal legislative sanction. In a Parliament held at Westminster 18th Edward II., there was a petition to the King and his Council from “*ercesques, evesques, countes, barons et autres genz de la cominaltie d’Engleterre,*” who prayed that they “might let to farm the wastes belonging to their manors, which they held of the King *in capite*, as well within forests as without, without the King’s licence first had.” The petition was endorsed *coram rege*, and the King’s answer is—“*Il ne puit estre fait sanz novele ley, laquele chose fere la comminaltie de la terre, ne vult mie uncore assentir.*” Probably this answer recognizes the true principle on which, as it was then understood, petitions were or should be dealt with. When no statute or common law was infringed, the petitions were disposed of by the Chancery or by the King with the advice of those members of the Privy Council who were appointed in that behalf. When the prayer of the petition could only be granted by a new law, repealing that already existing, the assent both of Lords and Commons was, though very loosely, recognised as essential.

Petitions requiring assent of Parliament.

Many of the private petitions, or bills, as they were also called in the time of Henry VI. and Edward IV., are drawn up in the form of Acts,¹ retaining the language of petitions along with the operative words of an enactment. It is clear, indeed, that then, as now, the petitioners, or promoters, as they would now be called, drafted in their own words the

any, was the joint assent to the prayer of the petition; the mode of giving effect to the prayer was by an exercise of the Lords’ ex-

clusive jurisdiction as the Supreme Court of Appeal.

¹ Statutes of the Realm, Introduction, App. E., p. 65.

terms of the relief for which they asked ; and that this relief was afforded, if at all, in the terms of the draft, with such modifications as the Crown or Parliament thought fit to introduce, preserving many of the forms of the petition.¹ Even if no operative words were introduced into the petitions, the relief ordered in Parliament, on the face of these petitions, may be regarded "as special statutes, of private or local application."²

¹ For examples of this mixed form of Petition and Act, see *post*, pp. 357, 375.

² May, 608, and authorities there cited. When the Commons are not named in early statutes, their assent may be presumed from the fact that most measures originated with their petitions. This origin is

shown by the title prefixed to the statutes when, in the latter end of the reign of Henry VI. or the beginning of Edward IV., they were first drawn in their present form :—
"Item quædam petitio exhibita fuit in hoc parlamento, formam actûs in se continens." (Dwarris on Statutes, 5.)

CHAPTER II.

MESSAGES BETWEEN THE TWO HOUSES : PROTESTS BY PEERS :
 ANSWERS AND ASSENTS BY CROWN TO PETITIONS OR BILLS :
 ROYAL ASSENT BY COMMISSION.

UPON the separation of the two Houses, some means of inter-communication became necessary upon Bills or other subjects from time to time pending. Conferences were generally held upon public measures,¹ though private Bills are sometimes so considered.² But messages between the two branches of the Legislature were always of frequent occurrence; and some of the early methods of communication may here be indicated.

Messages
between the
two Houses.

At the opening of the Parliament of 1400—1, the list of knights of the shires, citizens, and burgesses returned was called over by name in the Court of Chancery, at Westminster Hall, in the presence of the Chancellor and Keeper of the Privy Seal. (“*Les chivalers des countes, citezeins des citees, et burgeises des burghs, qui feurent venuz par sommons du Parlement, feurent proclamez par leur noms en la chancellarie du roy deins la sale de Westminster, en presence du chancelier d’Engleterre, et del seneschal de l’hostiel du roy.*”) Upon their appearance Parliament was adjourned and they were charged in the King’s name to be in their proper persons on the following day before his Majesty, in the Painted Chamber, at ten o’clock.³ On one occasion the Commons were directed to

Calling the
roll of mem-
bers.

¹ In 1360 the Commons requested a conference with certain lords by name, which was agreed to (2 Rot. Parl. 316); but at a later period the Lords declined a proposal that the Commons should meet five or six lords, and agreed that a mutual Committee should be formed for conference. (3 ib. 36.)

² Eddystone Lighthouse Bill, 1709,

16 Com. Journ. 375; Dunstable and Hockley Road Bill, 1711; ib. 629 *et seq.* In the Upper House a Committee was appointed, July 29, 1884, “to prepare reasons to be offered to the Commons for the Lords insisting on one of their amendments” to the Edinburgh Northern Tramways Bill (Lords’ Minutes, p. 1547).

³ 5 Rot. Parl. 454 (2 Hen. IV.).

Commons
allowed to go
home, the
Lords remain-
ing.

meet in the Painted Chamber at sunrise for the despatch of business.¹ Sometimes the whole body of the Commons had leave to go home; at other times they received permission to go, excepting a few whom the King wished to consult; while the Peers and Council remained in session.² After a long attendance in Parliament the Commons themselves prayed to be dismissed.³

Bills returned
to Commons
for amend-
ment.

In 1405—6 we find the Commons praying the King, through their Speaker, that they may have back for amendment any Bills sent by them to the Lords (*qe si riens serroit delivrez par eux en escript, q'ils purront re-avoir mesme l'escript, a quel heure qe leur plerroit durant le dit Parlement; a l'entent qe la matire comprise en yeel escript purroit par eux estre refourmez et amendez s'il embosoigneroit*). This prayer, with that of free liberty of speech, the King was graciously pleased to grant.⁴

Duke of
Suffolk's case,
1450.

On occasions, the great officers of State went to the Commons to receive replies or convey the Royal commands upon personal and private matters. In 1450, "the Speaker of the Parliament opened and declared in the Commen house, before the Chaunceller of England and other Lords with hym accompanied, to them sent down by the King's commandement," the charges against the Duke of Suffolk, premising that "the Kyng's pore Commens of his realme be as lovyngly, as herteley, and as tenderly sette to the good welfare and prosperite of his persone and of his roialme, as ever were any Commens sette to the welfare of their soveraigne Lord."⁵ So when the Commons were desired, in the same reign, to choose a new Speaker in the room of Thomas Thorp, then imprisoned, a committee of the Lords went to the Lower House, and the Commons were informed of the grounds upon which the Lords held that Thorp was not entitled to release on the ground of privilege. "The which

Lords com-
municating
with Com-
mons by Com-
mittee;

¹ 2 Rot. Parl. 237 (25 Edw. III.
A.D. 1351—2).

² Ib. 65, 69 (6 Edw. III. A.D. 1332).

³ Ib. 174, A.D. 1347.

⁴ 3 Ib. 568 (7 & 8 Hen. IV.).

⁵ 5 Ib. 177 (28 Hen. VI.).

premisses, for asmoche as they were materes in lawe, by the commaundement of the Lordes were opened and declared to the Commons, by the mouthe of Walter Moyle, oon of the Kynges serjeantz atte lawe,¹ in the presence of the Bishop of Ely, accompanied with other lordes in notable nombre; and then it was commaunded and charged to the said Commons by the said Bishop of Ely in the Kynges name that they should procede to th' election of an other Speker with all goodly hast and spede, so that the materes for the which the Kyng called this his Parlement might be proceded yn, and this Parlement take good and effectual conclusion and ende."²

by King's
Serjeant;

by Bishop of
Ely,

According to the first entry in the Lords' Journals, a message to the Commons was then, in 1509, conveyed by the clerk of the Parliaments and the Attorney and Solicitor Generals.³ In 1554, there is a record of a message brought to the Commons from the Lords by the Master of the Rolls and the Solicitor General.⁴ The judges, always summoned as assistants to the Upper House, were sometimes employed as messengers. In 1640, the Lords, being informed that some of the Commons were in attendance with a message, directed the gentleman usher to inform them "that their lordships were very busy" and could not receive the same. An explanation was afterwards sent to the Commons "by

Messages to
Commons,
1509-54,

In 1640.

¹ From 10th Edw. III. serjeants-at-law were required to attend the House of Lords; and there are nearly a hundred entries in the Parliament rolls binding these officials to assist the triers of petitions. (Manning's Serjeants' Case, X., 12, 206.)

² 5 Rot. Parl. 240 (32 Hen. VI.).

³ "Item, per Dominos datum erat in mandatis Clerico Parliamenti ac Attornato et Sollicitatori Regis quod crastino in mane deferrent ad Do-

mum Inferiorem Billam de Ecclesiasticis Libertatibus, de Retornis Escheatorum, et Billam de Apparatu Vestimentorum reformando." (1 Lords' Journ. p. 5; January 28, 1509.) In these early entries the House of Commons is generally called *Domus Inferior*; in one instance Bills are ordered to be sent ad *Domum Communem sive Inferiorem*. (Ib.)

⁴ 1 Com. Journ., November 29, 1554.

the two Lord Chief Justices to let them know that when their message was offered, the Lords, spiritual and temporal, in the High Court of Parliament assembled, were entered into great consideration about business much concerning his Majesty; his Majesty being present with them in person this morning; which is the cause why their lordships did not receive their message now."¹

By Judges
and Masters
in Chancery.

According to later usage, two of the judges had charge of Bills relating to the royal family on their way from Lords to Commons. Two of the Masters in Chancery, ancient attendants upon the Peers, were responsible for the safe carriage of every other Bill. One object of this care, and of the double custody, appears to have been to prevent any tampering with the Bills in their passage from one House to another. There is a tradition of a clerk who is supposed to have inserted "England" instead of "Great Britain" in a Distillery Bill,² thus materially limiting its operation. The Lords employed the same forms, not only in sending down Bills, but in transmitting messages on other questions to the lower House, and the Commons resented any departure from the ancient method of communication. In 1772, they complained that a message was brought to them by only one Master in Chancery and by the clerk-assistant of the Lords.³ During the Session of 1846, the same point arose. Only one Master could be found on an occasion when it was necessary to send down a message, and the Lords commissioned their clerk-assistant to accompany him. On being informed of the reason for the breach of precedent, the House of Commons, before receiving the message, directed the messengers to withdraw, and then passed resolutions acquiescing in the reason assigned, but "trusting that the same will not be drawn into precedent for the future." Then the messengers were called

Complaints
by Commons
of breach of
precedent.

¹ 4 Lords' Journ., 67, A.D. 1640.

of Commons, p. 15.

² Lords' Committee of 1836 on Ingrossment of Bills; evidence of Mr. Rickman, clerk-assistant of House

³ 33 Com. Journ., April 1, 1772; and see report and debate on April 9.

in, made acquainted by Mr. Speaker with these resolutions, and again withdrew.¹ The same irregularity occurred at other times during the Session, and was always met by the same protest from the House of Commons.

Delivery of a Bill to the Speaker by Masters in Chancery elsewhere than in the body of the House, was an informal and improper method, and it is related that a Bill was returned to the Lords because the Speaker met the Masters at the door of the House, and good naturedly relieved them of their charge.²

Informal delivery of Bills.

The Lords were equally tenacious in requiring that messages concerning Bills, whether private or public, should be delivered to them from the Commons with proper respect. Thus, in the year 1588, a private Bill, "for avoiding certain conveyances and other estates, supposed to be fraudulently procured by Thomas Drurie of the lands and leases of Thomas Haselrigge," was sent up with only four or five members, upon which the Lords returned the Bill, saying that they had cause to doubt it passed not with the general consent of the House, because it came not graced with a greater number, and left it to the consideration of the Commons to send it back in such sort as was fit.³ In the year 1699 a message was brought to the Lords by Sir Thomas Darall, to put them in mind of a private Bill "for making Billingsgate a free market for the sale of fish."⁴ After receiving this message, probably by inadvertence on the part of the officers of the House, the Lords resented what they appear to have considered an affront, and ordered "that the Usher of the Black Rod for the future, when he observes any message from the House of Commons that is not attended by more than one member, shall acquaint such member that he is not to be admitted alone."⁵

Bills and messages to Lords.

Billingsgate Fish Market Bill, 1699.

It became then the practice for eight members at least to take

Eight members charged

¹ 101 Com. Journ., pp. 1229, 1248, 1295, 1298—9.

² D'Ewes, 688.

³ This incident is reported in Hatsell, but is not noticed in the Lords' Journals (March 17, 1588), which mention the bringing of this Bill from the Commons.

⁴ There used to be frequent messages from one House to the other, to put them in mind of Bills sent up and unreasonably delayed in their progress.

⁵ 16 Lords' Journ. 434 (11 Will. III.).

with each
Bill.

Form ob-
served in
House of
Lords.

Bills to the Upper House. Black Rod, or his deputy, always counted heads before addressing the woolsack, and informing the House that there was a message from the Commons; and unless eight members were present he would refuse to call attention to them.¹ When the proper quorum was present, and Black Rod was ready to announce them, the door was shut, and they knocked for admission. They were then introduced by Black Rod, and in advancing towards the bar made three bows. The Lord Chancellor then went down to the bar, carrying the great seal: and the member in charge of the Bill delivered it into his hands, saying, "The Commons have passed an Act, entitled, &c., to which they desire your Lordships' concurrence." On receiving the Bill, the Lord Chancellor bowed, and returned to the woolsack. The members retired backwards, with the same obeisances; the door was shut upon them; and the same ceremony was gone through with each Bill.

Time lost in
receiving
Bills.

In this way much valuable time was lost. One of the Masters in Chancery, employed in 1847 to take Bills from the Lords to the Commons, described the reception of 51 Bills which had been sent from the Commons in one day of the Session:—"Lord Minto and I made a calculation that the Chancellor walked 1,670 yards, nearly a mile, and the time occupied was 44 minutes, and he walked as quickly as he could. Had he been an infirm man it would have taken an hour and a half. Meanwhile, the business of the House was absolutely suspended; everything was at a standstill while the Chancellor walked backwards and forwards."² The practice is said to have had a sufficient reason for its origin: in former times the Chancellor received a fee of ten guineas for every private Bill.³ The form observed in receiving messages from the Commons seems to have varied,

¹ Hatsell (III. 26) notices this rule of the Lords, and says the ancient form was for the Commons to send one member, specially named, upon question put, but accompanied by other members. The Speaker,

therefore, always called, "Gentlemen, attend your messenger!"

² Commons' Committee of 1847 on Private Bills; evidence of Master W. Brougham, p. 243.

³ *Ib.*

for in the year 1662, upon a report made by the Committee of Privileges, the Peers ordered that the Lord Chancellor, or other Speaker of the House, should alone go to the bar and receive messages, the other Lords sitting.”¹

When a Bill was popular and important, a large number of members attended the Chairman of Ways and Means, or the member who had charge of it and was directed to carry it to the Lords. Such a Bill was usually sent alone, to mark its exceptional interest in the Commons’ view. When several Bills were sent up, the following order was observed :—First, out of respect for the Lords, Bills which came originally from that House ; secondly, Bills originating in the Commons and sent back to the Lords after amendment there ; thirdly, public Bills originating in the Commons, in the order of their importance ; fourthly, private Bills.² Why a quorum of eight members, as messengers, should have been insisted on by the Lords, is not clear. One reason suggested is that eight members used to form a quorum of a Select Committee.³ Neither House, it has been supposed, chose to receive communications from the other by clerks, but insisted that messengers from the other House should be persons entitled to sit there. Masters in Chancery were originally summoned to attend in the House of Lords ; afterwards, by immemorial usage, they attended without summons, and, as the lowest in rank in the assembly, were naturally employed as messengers.⁴ This explanation, however, does not agree with the statement of the House of Lords themselves, one of whose Orders ran as follows :—“ Here it is to be observed and noted that we never send to the Lower House by any members of our own, but either by some of the learned counsel, Masters of the Chancery, or such like, which attend us, and in weighty

Order of presenting Bills.

¹ 11 Lords’ Journ. 30 (12 Car. II.). Senior and Brougham, pp. 246-7.

² Hakewill, 175.

³ May, 488.

⁴ Commons’ Committee of 1847 on Private Bills ; evidence of Masters

There used to be ten Masters in Chancery, their head being the Master of the Rolls.

causes some of the Judges, but the Lower House never send unto us any but of their own body."¹

Procedure
amended in
1847 and
1856.

In 1847, upon the report of a Select Committee to that effect, the Lords agreed to receive, as one message, all Bills sent from the Commons at the same time, instead of treating each Bill as the subject of a separate message. In lieu also of the verbal message from the members in charge, communicating to the Lord Chancellor the title of each measure, and the Commons' assent, a list of the Bills, with a statement of such assent, was handed in by the messengers along with the Bills. At the same time the Lords agreed to waive their ancient custom which required that all messages from the Commons should be brought to them by eight members. The peers recognized that the attendance of so many members might occasionally be inconvenient to the Commons, and expressed their "willingness to receive such messages when brought up by five members only."² On their side, the Commons agreed to receive messages from the Lords at the hands of one Master in Chancery instead of two.³

Existing
practice.

In 1855 the office of Master in Chancery was abolished,⁴ and the way seemed clear for a still simpler procedure. After a conference, therefore, between the two Houses, it was agreed that "one of the clerks of either House may be the bearer of messages from the one to the other; and that messages so sent may be received at the bar by one of the clerks of the House to which they are sent, at any time whilst it is sitting or in Committee, without interrupting the business then proceeding."⁵ In the interchange of private still more than of public Bills, much valuable time has been saved by this arrangement. The last occasion on which a message relating to the royal family was brought to the Commons by two judges occurred in 1863 and 1871, when the Lords returned the Prince of Wales' annuity Bill, and

¹ Lords' Journ., April 5, 1707.

² *Ib.*, July 12, 16, and 19, 1847.

³ 102 Com. Journ. 861.

⁴ 18 & 19 Vict. c. 134.

⁵ 110 Com. Journ. 254.

notified their agreement to the Princess Louise's annuity Bill.¹ Since then Bills of all kinds have been exchanged by clerks without any formal reception of the messengers or any interruption to business.

Peers have a right to record their dissent to any vote of the House, without asking leave of the House, and their protests are entered as of course in the Journals, if made within a limited time.² The first recorded protest is that made in the year 1341, by the Chancellor, Treasurer, and Justices, against certain Statutes, if contrary to the law and usages of the realm.³ Though not in the formal shape which they afterwards took, the early protests gave reasons, and in substance appear to be of the same nature. Thus, the Bishops and other Prelates protested in 1387-8, on withdrawing from Parliament, that they did so without derogation to their right of peerage.⁴ On another occasion the Archbishops of Canterbury and York protested on behalf of themselves, their suffragans, and the clergy of their respective Provinces, that they would agree to no statute abridging the Papal authority, or tending to subvert the liberties of the Church.⁵ And protests were entered on the Rolls of Parliament at the request of the protesting Peers.⁶

Protests in
the Lords.

Such protests are usually reserved for grave occasions of State; but one against a private Bill, in the year 1811, deserves notice from the high legal authority of those who made it. The Bill was one for the sale of part of the estates,

¹ May, 489, who says that in 1863 this revival of an obsolete ceremony, once regarded as solemn and dignified, "provoked shouts of laughter."

² Lords' Standing Orders, 32.

³ 15th Edward III. 2 Rot. Parl. 131. "Les Chauncellor, Tresorer, et ascuns des justices firent lour protestation q'ils ne assentirent a la fesance ne a la forme des ditz estatutz, ne qu'eux ne les purroient garder, en cas qe meismes les esta-

tutz fussent contraires a les leies et usages du roialme, les queux ils feurent serementez de garder."

⁴ 11 Richard II. (1387-8), 3 Rot. Parl. 236, 244.

⁵ Ib. 264.

⁶ Ib. 529; by the Archbishop of Canterbury, who asked that his protest "purroit estre entrez de recorde en rolle de Parlement" (A.D. 1403-4); 5 ib. 183.

Pryce's Estate
Bill.

in the county of Glamorgan, settled under the will of Thomas Pryce, and for laying out the purchase-money upon more convenient estates. The Bill contained a clause giving power to the Court of Chancery, "from time to time, in a summary way, upon petition by William Booth Grey, his executors, administrators, or assigns," to inquire what had been spent by Mr. Grey in rebuilding the offices and repairing the mansion-house at Duffryn, and, upon the Master's report, the Court might order the repayment to Mr. Grey of the monies so expended by him. This clause was objected to upon the third reading, but being carried after debate, the following protest was lodged:—¹

"1. Because the clause in question provides for repayment to the husband of a tenant for life of expenses incurred in rebuilding offices, &c., belonging to the estate of which his wife is tenant for life, and in repairing the mansion-house, although no circumstance has been stated entitling him to such repayment which will not equally justify the like interposition of Parliament to repay similar expenses in the case of every tenant for life, and consequently to throw, by a special law, upon the inheritance of every estate the burthen of repairs, which the general law of the land imposes on those who enjoy life interests.

"2. Because such special interposition of Parliament, altering the general law of the land, must necessarily, for obvious reasons, produce inequality in the rights of individuals in the enjoyment of property.

"3. Because the precedents referred to in support of the clause are in themselves very questionable, and yet do not warrant the clause; and it is strange reasoning, that because Parliament has done wrong in one case it ought to do wrong in another; and perhaps stranger reasoning, that because Parliament may have done wrong in one case, it ought to do wrong, and more wrong, in another.

"4. Because the clause in question operates partially and retrospectively to alter the general law of the land; and if the expense of buildings, and repairs incurred by persons having life interests ought, without any special circumstances, to be thrown on the inheritance, the general law of the land ought to be altered; but such alteration ought to operate

¹ 48 Lords' Journ. 364.

prospectively only, and not retrospectively; so that those who may, after such alteration in the law, create estates for life, either by voluntary disposition or by contract, being aware of the new law, may guard against its operation by special provisions if they should see fit. But if Parliament can, with propriety, thus alter the general law by special Act applied to a particular case, not distinguished by particular circumstances, any such special provisions must be nugatory and vain.

"5. Because the clause in question tends directly to destroy that reliance which every man ought to have, that the law of the land will protect that property in which he is interested from any burthen in favour of others having partial interests in the same property, which neither the general law of the land, nor the instrument under which he claims, has imposed on it; and it must therefore tend to destroy all confidence in the general law of the land, and render all rights of property uncertain, and wholly dependent on such special law as Parliament may be prevailed upon to make on the particular subject."

This protest is signed by Lord Eldon, Chancellor; by the Duke of Norfolk, Earl Marshal; by Lord Redesdale, who had been Lord Chancellor of Ireland; and by Lord Walsingham, then Chairman of Committees. The Bill, however, passed¹ in spite of this powerful remonstrance. Although the special circumstances have no longer any interest, the general principles asserted in this protest still apply to some instances of private Bill legislation, and on this account the protest is worth reproducing here.

Lords Eldon, Redesdale, and Walsingham protesting.

When either House passes a Bill, its assent is still notified to the other House by indorsements in the old Norman French of which examples have been given. If the Bill originates with the Commons, it is marked "Soit baille aux Seigneurs;" if the Bill has come down from the Lords, the clerk of the House writes: "A ceste bille les Communes sont assentuz." When amendments are introduced by the Lords, the clerk of the Parliaments indorses the Bill: "A ceste bille avesque des amendemens les seigneurs sont assentuz;" and if, on the return of the Bill, the Commons adopt the

Assent to Bills noted by each House.

¹ 51 Geo. III. c. 64 (not printed).

amendments, it is marked "A ces amendemens les Communes sont assentuz."¹

Petitions or
Bills; temp.
Hen. VII. and
Hen. VIII.

In the latter years of the reign of Henry VII. the private petitions presented to the House of Commons or to Parliament were occasionally called Bills, although they still began with the address, and ended with the prayer, proper to petitions.² Bills concerning the estate of Sir William Shaa (*sic*), Mayor and Alderman of London, and for the reversal of a bill of attainder affecting Worsley, Dean of St. Paul's, are so described; but the language throughout is that of the "orator" or "suppliant."² In the following reign private applications for legislative aid were indifferently described as petitions or Bills; and the clerk's entry on the rolls was: "Item, quedam alia billa, formam ejusdam actus in se continens, exhibita est prefato domino regi, in Parlamento predicto, ejus quidem bille tenor sequitur, in hec verba."³

The reading
of Bills.

The petition or Bill appears to have been always read in Parliament. After the terms of the petition were set forth on the rolls, the Clerk of the Parliaments subscribed that it had been read, heard, and fully understood:—"Lecta, audita et plenius intellecta;" or "perlecta et intellecta;" or "perlecta et efficaciter percepta;" or "perlecta et materia ejusdem plenius intellecta;" or "postquam sepius lecta est et ad plenum intellecta;" or "sepius lecta et materia in eadem plenius intellecta." All these variants are from entries made in the reign of Henry VII.,⁴ and after this recital of the reading of the Bill or petition came the statement "de avisamento et assensu dominorum spiritualium et temporalium, ac comitatis regni Angliæ, in eodem Parlamento existen., ac auctoritate ejusdem, respondebatur eidem in forma sequenti—" "Soit fait come il est desire." "

It is probable that, at a period when Bills were not printed for the use of Members or Peers, they were in fact read in

¹ May, 591; Hakewill on the Passing of Bills, 160.

² 6 Rot. Parl. 488-90.

³ 21 Hen. VIII.; 7 Rot. Parl. 165; an Act for assuring certain lands to Elizabeth, Duchess of Norfolk.

⁴ See 6 Rot. Parl. *passim*.

full to either House. The motions still made, that Bills be read a first, second and third time, are, as we know, mere forms of words, survivals of a time when they may have really meant what they express, but now only affording opportunities for discussion. From the Latin entries which have been quoted, it may be gathered that Bills were read more than once. The first mention of the modern practice of a third reading occurs in the year 1495, when the clerk's entry, prefacing the royal assent, is—"Cui bille *trina vice* lecte et clare intellecte," &c.¹ Again—"Cui vero bille, *ter lecte* et plenius intellecte, per prefatum dominum regem, assensu et auctoritate predictis, talis ut sequitur fiebat responsio:—"Soit faite come il est desire.""² And "que quidem billa *ter lecta* fuit et mature intellecta," &c.³

First mention
of third read-
ings, 1495.

The Royal assent to Bills has for many centuries been signified in the same language, though in somewhat varying terms. "Le roy le veut,"⁴ the form now used for public

Royal assent.

¹ 11 Hen. VII.; 6 Rot. Parl. 492.

² Ib. 493.

³ Ib. 512. The earliest entries in the Journals of both Houses of Parliament show that, in and after 1509, Bills were read a first, second and third time. In 1514, one Bill about crestcloth and buckram was even read a fourth time. The entry is:—

"Item, billa concernens crestcloths et bokeram lecta est jam quarta, et domini deliberabunt super eadem billa."

1 Lords' Journ. 42. It was probably a Bill upon which there was unusual difference of opinion. The rule was to have three readings, which sometimes appear to have been gone through on the same day, without urgency, for just above the entry concerning the buckram Bill two other measures are noted, each of which "lecta est primo, secundo et tertio, et per dominos assentita."—1 Lords' Journ. pp. 4-5 *et seq.*; 1 Com. Journ. 4.

⁴ Of the Norman French thus used in Parliamentary proceedings,

Blackstone says: "It is a badge of conquest which one could wish to see fall into total oblivion, unless it be preserved as a solemn memento to remind us that our liberties are mortal, having once been destroyed by a foreign force." (1 Com. 184.) But this language is surely somewhat strained. Englishmen need not wish to destroy these traces of a continuous parliamentary history of more than six centuries through sensitiveness on account of the Norman Conquest. During the Protectorate the English language was alone used in Parliament. In 1706 the House of Lords passed a Bill "for abolishing the use of the French tongue in all proceedings in Parliament and in courts of justice," but it dropped in the House of Commons; and the Act of 1731 (5 Geo. II. c. 26), that all proceedings in courts of justice should be in English, omitted any reference to Parliament.

Bills, was employed more than five hundred years ago.¹ "Soit fait comme il est désiré," the existing form of assent for private Bills, is found, even at an earlier period, in other equivalents, as "Soit fait selon ce q'il prie;"² or "Il plect à notre Seigneur le roi q'ensi soit."³ But Royal assents in those days were also sometimes explanatory or conditional. Examples have already been given of answers to early petitions, both entered on the rolls of Parliament, and forming together a mixed judicial and statutory record. A few other instances may now be cited, tracing the changes in the form of those "Responsiones" which perfect our statutes.

Answers to
private peti-
tions, 1314-
15.

In 1314—15, there is a petition from the commonalty, on the part of the people in East London (nomement ceux de l'eist de Londres), for the repair of bridges and roads at Stratford, (qu'ils peussent avoir leur chemyn reparaile des pounz et des chaucez de Stratford), as these bridges and causeways are in such bad condition as to be almost impassable, and provisions in the City are thereby made very dear (les dites pointes et chaucez sont si dessetez et brusez que nul homme ne pet bonement passer, ne vitale, ne autres biens par la carier, par qui le pople avandite est molt greve, et la vile de Londres durement encherie).

In a Latin answer to this Norman-French petition the king directs the justices to proceed in any suit touching the repair of the bridges and causeways at Stratford, notwithstanding any supersedeas to the contrary:—"Responsum est: Mandetur Rogero le Brabanzon, et sociis suis, coram quibus placitum pendet de reparatione pontium et calcetorum Stratford, quod, non obstante aliquo mandato regis, eis hactenus de supersedendo in negocio illo directo, procedant, et partibus faciant festinum justitie complementum; faciendo mentionem in brevi quod victualia usque London per pontes illos venire non poterunt, et etiam de aliis dampnis que eveniunt et evenire poterunt rupturam pontium et calcetorum prædictorum."⁴

¹ Le roy le voet. 2 Rot. Parl. 1347-8).
314 (46 Edw. III. A.D. 1372).

² Ib. 262 (A.D. 1354).

³ Ib. 214 (21 & 22 Edw. III. A.D.

⁴ 8th Edw. II.; 1 Rot. Parl. 308.

So, in the same year, when the Chancellor and scholars of Oxford University complain of evil-doers who take refuge in certain liberties outside the walls, "*Responsum est per Consilium: Mandetur majori et ballivis quod insequantur cum toto posse suo transgressores in villa et suburbio Oxon, tam infra libertates quam extra, pro pace Universitatis predictæ manuteneda, quotiens necesse fuerit, et per Cancell. et procuratores Universitatis fuerint premuniti; et quod transgressores illos arestent et attachient ad standum recto super transgressionibus quas per ipsos fieri contigerit,*" &c.¹

As to evil-doers at Oxford.

The following are other forms of answer in the reign of Edward II.:—"Soit fait;"² "Le roy ne voet mye que les leys soient chaungez;"³ "le roy n'est pas encore de ceo avisez;"⁴ "Rex concedit."⁵ In the reign of Edward III.:—"Nostre Seigneur le roy, par assent de prelatz, ducs, countes, barons, et la commune, ad ordeine et establi, que les ditz chartres et estatuz soient tenuz et mis en execution, solonc la dit petition;"⁶ "Le roy a la requeste de la commune l'ad grantee;"⁷ "Le roy voet;"⁸ "Le roy voet qu'il soit fait par bon conseil;"⁸ "il plect au roy;"⁸ "il plect au roy q'ensi soit de ce jour en avant;"⁹ "Le roy ordeinera sur ceo point sicome lui semblera mieulx, par avis de son bon conseil."¹⁰ "Attende tan que au proschein Parlement, car il ne poet estre fait a ore."¹¹

Answers, Edw. II. and Edw. III.

In the reign of Richard II.:—"Il semble que les estatuz ent faitz devant ces heures sont suffisantz, lesqueux soient tenuz et gardez;"¹² "Le roy ent ferra, par l'advis de son conseil, selonc ce que mieulx lui semblera que soit a faire, pur le profit de lui et de son royaulme;"¹² "Le roy voet, et commande que les estatuz ent faitz soient veux et enlargez, selonc ce qu'est demandez."¹²

Rich. II.

¹ 8th Edw. II.; 1 Rot. Parl. 327.

⁷ Ib. 270.

² 1 Rot. Parl. 387.

⁸ Ib. 271 (A.D. 1362).

³ Ib. 380.

⁹ Ib. 287 (A.D. 1364-5).

⁴ Ib. 379.

¹⁰ Ib. 304 (A.D. 1371).

⁵ Ib. 476.

¹¹ Ib. 307.

⁶ 2 Ib. 269.

¹² 4 Rich. II.; 3 Rot. Parl. 96.

Hen. IV.

In the reign of Henry IV.:—"Quelle petition, lue et entendue, feust respondue en la forme qu'enseute: Le roy, de l'avis et assent des seigneurs espirituelx et temporelx, et de les communes de l'Engleterre, ad ottroiez ceste petition en plein Parlement, solonc ceo qu'est contenu en mesme la petition, en tout pointz."¹

Petitions of
grace.

To a personal petition immediately following, the king's consent is given "de sa grace especiale, en plein Parlement," omitting any reference to Lords or Commons. A third petition of like character is assented to by the king of his special grace, by advice and assent of the Lords only. In another case the king's assent is given "by the advice and assent of the Lords spiritual and temporal, and at the request of the Commons in Parliament."²

Hen. V.

In the reign of Henry V., the king's answer to a petition from the priory of Montagu, county Somerset, is—"Le roy le voet, de l'assent des seigneurs espirituelx et temporelx, a la peticion et especiale requeste des communes en cest present Parlement assemblez."³ To a petition concerning lands in Carmarthenshire, marked—"Les communes ont donez leur assent," the form of assent is—"Soit il come est desiree par ceste peticion."⁴ To a petition from Lord Huntingdon:—"Soit le suppliant hablie, come il est desire par la petition, par l'auctorite de cest Parlement;" and then the answer points out in considerable detail what conditions the petitioner must comply with.⁵ Other assents in the same reign set out similar conditions. Several assents to private petitions are in these words:—"Soit il come est desiree par la peticion, si le plect au roy.

Royal assents
with condi-
tions.

Petitions by
Earls of Rich-
mond and
Pembroke,
1454.

In 1454, there are some instances of assents to private Bills followed by saving clauses. One such Bill, promoted by the Earls of Richmond and Pembroke, has this preface, in a form then and long afterwards usual:—"Item, quædam alia petitio,

¹ 6 Hen. IV. (A.D. 1404); 3 Rot. Parl. 550; answer to a personal petition from the Earl of Somerset.

² 13 Hen. IV.; 3 Rot. Parl. 655.

³ 2 Hen. V. (A.D. 1414); 4 Rot. Parl. 27.

⁴ Ib.; 4 Rot. Parl. 91.

⁵ Ib. 100-1.

cum duabus cedulis eidem annexis, exhibita fuit eidem Domino Regi, in Parlamento predicto, per prefatos Communes, pro Edmundo de Hadham Comite Richemondie, et Jaspere de Hatfeld Comite Pembrock, in hæc verba.” Then follow, also in Latin, the petition and the schedules, with this comment:—“Quibus quidem petitione et cedulis, in Parlamento predicto lectis, auditis et plenius intellectis, per dictum Dominum Regem, de avisamento et assensu dominorum spiritualium et temporalium in dicto Parlamento existen., ac ad supplicationem communitatis predictæ, responsum fuit eisdem in forma subsequenti—*Fiat prout petitur.*”

Then come two saving clauses in English:—“Provided always that this present acte extende not nor be in eny wyse prejudiciall to John th’ Abbot of Saynt Albones, to the covent of the same place, nor to thaire successors, for the priory aliene of Seint Nicholas of Pembrok with th’ appurtenaunce, which with the licence of our Soverayne Lord that nowe is, was yeve unto the seid house by Humfrey late Duke of Gloucester, to pray perpetuelly for his sowele.” “Provided also that this acte be not prejudiciall, ne hurt to eny leese, graunt or dymyse made to Gervays Clyfton, John Scot, and Thomas Syngleton, or to tweyn of theim, or to eny of theim, of eny lordship or parcell of the erledome of Rychemond, nor to eny assignement made unto the most reverent fader in God John Cardinall Archebishop of Caunterbury, by what name he be called in the said assignement.”¹

Saving clauses
following
Royal assent.

It will be seen that this private petition or Bill as drafted is made a statute, by advice and assent of the Lords, but only upon the prayer of the Commons, and that the additional clauses are introduced after the Royal assent. There are other instances to the same effect in the reign of Henry VI.² So in the year 1477, the royal reply to the petition for a private Bill, promoted by Sir Ralph Asheton, was—“Soit fait come il est desire, avecque les deux exceptions yci pursuantz ;”

Conditional
assent, 1477.

¹ 31 & 32 Hen. VI. ; 5 Rot. Parl.
252.

² 5 Rot. Parl. 254.

and then follow two saving clauses, one postponing the operation of the Act for a specified period, the other saving the rights and franchises of the county palatine of Lancaster. These clauses are inrolled as part of the statute.¹

Recitals to
Royal assents.

In the reign of Henry VI. there are recitals to Royal assents, as in the year 1422, when, upon a petition "to the worthy and discreet Commons of this present Parliament," from John Forster, clerk, setting forth great services to the late King, and long confinement in a French prison on his way to Rome, the King's assent is given after a recital of this good service, and a confirmation of the main facts alleged by the petitioner:—"Accordez est et assentuz en ceste Parlement . . . a la requeste des Communes esteantz en le mesme," &c.² To a petition from the friars preachers, and friars minors of London, Cambridge and Oxford, for the payment of certain annual stipends, the answer is:—"Soit il come il est desire par la peticion, a l'honneur et reverence de Dieu."³

Royal assents
in English by
Hen. VI.

For the first time in the reign of Henry VI. we meet with Royal assents in English. In the year 1423, petitions were presented setting forth the great scarcity of "white money, because that silver is bought and sold unkoyned," and asking that penalties be imposed upon persons so offending. The "Responsio" begins—"Be it ordeyned that no man by ne sell no silver in flats broken, ne in masse, beyng as good of alay as the sterlyng, above xxx shillings the pound of troie over the facion, upon the peine continid wyth in the petition, wyth the provision continid in the same petition." Other operative parts of the Act occur in the assent, in part original and in part founded on the petition; and the conclusion is—"Be it ordeined as it is asked."⁴ To another petition in the

¹ 17 Edw. IV.; 6 Rot. Parl. 182.

² 1 Hen. VI.; 4 Rot. Parl. 194. The petition is in English, the answer in Norman-French. See other instances of private petitions in the same year. One from the Earl of Stafford has an endorsement

that the King's answer is contained in a schedule annexed to the petition. Ib. 195.

³ Ib. 196.

⁴ 2 Hen. VI. (A.D. 1423); 4 Rot. Parl. 256.

same year, for securing greater certainty in measures of wine, and fining vendors with unjust measures, the answer is—"Soit fait come il est desire; sauve que celluy qui trouva les defautz ait la quarte partie de la forfaiture."¹ To an ordinance by authority of Parliament that every goldsmith and worker of silver in the City of London should procure a mark upon his work, to certify its sterling value, the assent is—"Be it as it is axed, so that every goldsmyth's mark be knowen to the wardens of the craft."² "Be it as hit is axed," is a simpler form of assent to another petition; or, again, "Be it as hit is axed, with the peyne of double damage."²

Other examples in this reign are—"Le roy s'avisera;" "Le roy voet pur trois ans."³ "Be it as it is desired, unto the next Parliament;"⁴ "Le roy le voet, et que commencera et serra en sa force le primer jour de cest present Parlement, et nemye devaunt."⁵ To nine consecutive petitions, or Bills, sent up from the Commons in the year 1455, a refusal was returned in the form—"Le roy s'avisera." One of these bills was endorsed "Huic bille Domini non concenserunt;"⁶ but the bill did not thereby drop, and seems to have been left for the King to reject. One qualified form of assent is—"The Kyng hath graunted this petition in maner and forme as it is desired. Provided always;" and then follows a clause protecting the rights of the Bishop of Durham and his successors.⁷

Other forms
of answer by
Hen. VI.

In the 38th Henry VI., there is an instance of a qualified Royal assent to part of a bill, and a refusal as to another part. A petition, in English, was exhibited in Parliament (A. D. 1459) for the attainder of the Duke of York and others, for the forfeiture of certain estates, and the pardon of other offenders who took arms against the King at the battle of St. Albans. After long recitals of the "most detestable fixed

Bill in part
assented to,
in part
rejected by,
Hen. VI.

¹ 2 Hen. VI. (A. D. 1423); 4 Rot. Parl. 256.

² Ib. 257.

³ A. D. 1433; 4 Rot. Parl. 450.

⁴ A. D. 1436; Ib. 500.

⁵ A. D. 1451; 5 Rot. Parl. 225.

⁶ 5 Rot. Parl. 330-5.

⁷ Ib. 346.

traitorous purpose and desire" of the attainted persons, the operative part of the statute begins:—"Wherefore please it your Highness, these premises considered, by the advice and assent of your Lordes spirituelx and temporelx, and of your Communes, and by the authorite of the same, to ordeyne, establish and enact." Then come clauses of attainder and forfeiture, with many provisoes, after which the King's answer is given in these terms:—"The Kyng agreeth to this Acte; so that be vertue thereof he be not put from his prorogatyf, to show such mercy and grace as shall please his Highness, according to his regalie and dignitee, to eny persone or persones whos names be expressed in this Acte; or to eny other that myght be hurt be the same; but as to Richard Lord Powes, and Walter Devereux, herein named, Le roy s'avisera."¹

Assent with
saving
clauses, 1459.

In the same year a petition, also in English, was presented in Parliament for an Act to confirm the Prince of Wales in the Duchy of Cornwall, and the form of assent shows that it was treated as a private Bill. It is followed by the usual Latin averments, that the petition and schedules had been fully considered by the Commons and assented to by them in this form—"A cest bille, et a les cedulae a ycest bille annexez, les Commyns sount assentuz;" that the petition and schedules so assented to had been read in Parliament and well understood; and that by the advice and assent of the Lords spiritual and temporal, by the authority of Parliament, the King's answer was:—"Soit fait come il est desire; saufes au roy ceyrteyns choses, en manere et fourme ensuantz." And then there are several provisions saving individual or corporate rights.²

Conditional
assents,
Edw. IV.

In the following reign the same conditional assents occur, accompanied by provisoes forming part of the inrolled Act.

¹ The petition, or Bill, set out a pardon for Lord Powis and Walter Devereux. 5 Rot. Parl. 346-50.

² 5 Rot. Parl. 356-63. See similar conditions introduced after assent to a public Bill, for annulling certain letters patent. Ib. 366-7.

The first of these assents to a petition, declaratory of the King's title and resumption, is as follows:—"The Kyng, by the advis and assent of the Lords spirituall and temporell in this present Parliament assembled, at the request of the Commyns beyng in the same, agreeth and assenteth to this petition, and hit accepteth, with certeyn moderacions, provisions and exceptions, by his Highness theruppon made, and in certeyn cedulaes writen, and in the same Parliament delyvered, the tenours of which hereunder followen." Several pages of provisoes and saving clauses are then added.¹ To a piteous petition from artificers in London and other cities, asking for relief from foreign competition, the answer is:—"The Kyng agreeth to this petition, with the provisions hereafter folow-yng."² To votes of money, accompanied by petitions for redress of specified grievances, the King replies:—"Le roy considerant les bones coeurs de ses Communes, en faisauntez a luy les grauntes avantditz, mesmes les grauntz accepte, et leur molt entierment remercie: leur ottroiant que toutz autres articles et peticions en cest endenture contenuz, soient faitz sicome ils sount desirez, ovesque cestes ll provisions yci ensuauntz," which are accordingly set out at length. So a private Bill, assented to by the Commons, for restitution to the Earl of Oxford, is answered—"Soit fait come il est desire, ovesque certains provisions et exceptions par le roy sur cest Acte faitez, et a la dit bille auxi annexes; les tenours des queux cy ensuent."³

During the latter part of the reign of Edward IV., and that of Richard III., there were fewer conditional assents to private or public bills; and the simple "Soit fait come il est desire," "Le roi le voet," or "le voet en toutz pointz," became the usual form of reply. In the reign of Henry VII. Hen. VII. we meet with—"Soit fait come il est desire, solonque la fourme de peticion et la cedula a ycell annexe."⁴ A petition

¹ 1 Edw. IV. A.D. 1461; 5 Rot. Parl. 463-75. See also 4 Edw. IV., ib. 515-48.

² Ib. 550.

⁴ 1 Hen. VII.; 6 Rot. Parl. 311. This is an Act of restitution in favour of Lord de Roos, and the royal assent

² 4 Edw. IV.; 5 Rot. Parl. 506-7.

from the Provost and Scholars of King's College, Cambridge, and from the Provost and College of Eton, for restitution of estates of which they had been forcibly despoiled, is assented to without qualification, but after the "Soit fait come il est desire," comes this memorandum:—"Item, quedam proviso concernens manerium de Dyseworth, in com. Leycest., facta est per dominum regem in Parlamento predicto, cujus provisionis tenor sequitur in hec verba:—"Provided alway, that this acte of restitution extend not in any wise to the manor of Dyseworth in the countie of Leycestre, ne to any parcell thereof, by whatsoever name or names the said manor is named or called.'"¹ The preceding petition was "ordeyned, established and enacted by your Highnesse and the Lordes spirituall and temporall, and the Comens in this present Parliament assembled, and by authority of the same;" and the words describing the proviso clearly show it sprang from the King's sole authority.

Gradual limitation of royal prerogative in Parliament.

This appears to be the last recorded instance of a Royal assent, qualified by new provisions, grafted upon Acts, as all the foregoing were, without express consent from either Lords or Commons. Such provisions must have been suggested either by petitioners against the particular Bills, although the rolls of Parliament do not mention the existence of any such petitions, or by some members of the King's Council, discharging similar duties to those now undertaken by the Chairmen of Committees in the two Houses, in order to prevent encroachments upon private or public interests. We can point to no protest by Parliament against this claim by the Sovereign to vary statutes of his own will. The practice may have been acquiesced in because of its general use in protecting undoubted rights, personal or public. Before the close of the fifteenth century, however, Parliament had silently acquired control over the whole contents of each

is followed by a clause protecting the rights of Philippa, the mother of Lord de Roos.

¹ 5 Hen. VII. (A.D. 1489); 6 Rot. Parl. 435-6.

Bill; and the royal prerogative was restricted, as at present, to a simple assent or veto without any right of amending any measure. The existing forms are authoritatively declared in the Lords' Journals for 1509,¹ and again in 1597, when, among various entries concerning private Bills, there is a note of the words which are "to be written at the head of every Act by the Clerk of the Parliaments, as the Act is either public or private, when her Majesty hath given her consent:—To a public Act allowed, '*La royne le veult.*'² To a private Act allowed, '*Soit faict comme il est désiré.*' To such Acts as her Majesty doth forbear to allow, '*La royne s'avisera.*'"³

Forms of
assent
prescribed,
21 Hen. VIII.
and 39 Eliz.

Royal assents to Bills are given by persons appointed by Royal Commission as well as by the Crown in person. In the former case, the titles of the Bills are set forth in the Commission. If the Sovereign be present, the Royal commands are ascertained and endorsed on each Bill. In both cases, after its title has been read by the Clerk of the Crown, the Royal assent to each Bill is signified by the Clerk of the Parliaments, who, standing with his face towards the throne, turns slightly towards the bar in pronouncing the prescribed words of Norman-French, for the better information of Mr. Speaker and the Commons who have been summoned and are attending there. The same form is described in 1509, when the Speaker presented the usual Bill of subsidy to Henry VIII. at the dissolution of his first Parliament—"Domino rege in solio majestatis sedente, in camera vulgariter dicta '*Camera crucis,*' infra palatium suum de Westm., assedentibus dominis tam spiritualibus quam temporalibus, habitibus sive robis Parliamentalibus decoratis, presente etiam a domo Com-

Form now
observed in
giving Royal
assent.

Similar to the
form of 1509,
itself de-
scribed as of
old custom.

¹ 1 Hen. VIII.; 1 Lords' Journ. 9.

² In the reigns of Philip & Mary, and of William & Mary, the form of assent was "*Le roy et la reyne le veulent.*"

³ 2 Lords' Journ. p. 225 (39 Eliz.). D'Ewes, in his journal (p. 596), says that, of 67 private bills which had passed both Houses, Queen Eliza-

beth refused her assent to all but 19. The last Bill thus rejected was one for settling the militia in Scotland, in the year 1707, when the ancient form was used by Queen Anne; 18 Lords' Journ. 506. Charles I., in negating a Bill, added reasons for taking this course; 13 ib. 394; 18 ib. 506.

muni, sive inferiori, toto populo, sive plebe, Thoma Inglyfyld, milite, eorum prolocutore, sive duce, qui (silentio prius indicto) graviter, eloquenter, et magno cum honoris, humilitatis ac modestie honestamento, sic regiam affatus est majestatem, eandem summis extollens laudibus."¹

When the Lord Chancellor had answered Mr. Speaker ("Domino rege prius tamen consulto"), all the bills of the Session were called over and received the Royal assent, in customary form:—"Quo facto, idem Dominus Cancellarius, Reverendissimus Pater Archiepiscopus, Acta omnia in presenti Parlamento pro bono publico edita et facta, ex mandato Domini regis, recitari et publicari jussit, quibus ex ordine (ut moris erat) per clericum corone per initia recitatis et lectis, et singulis per clericum Parliamenti responsione secundum annotationes regie voluntatis declaratione a dorso scripta, facta per hec verba: 'Le roy le vult,' 'Le roy se advisera,' 'Soit fait comme il est desire.' Bille de subsidio indorsa 'Le roy remercie ses communes de lor bons ceurs en faisant les grauntez, suis dictz mesmes les graunts, ac accepte, et tout le content en l'indenture avandit especifie graunte et approve, avesque l'act et les provisions a cest indenture annexe.'"²

Clerks of
Crown and of
Parliaments.

Distinction
between
public and
private Bills.

The distinction between public and private Bills was not always clear. Thus, in 19 Henry VII. an Act respecting

¹ 1 Lords' Journ. 8. This first speech by a Speaker recorded in the Journals, though the Latin version is not exactly Ciceronian, may be allowed a place here. It more than bears out the high, if not fulsome, praise of the King ascribed to it in the text:—"Dotes nature, fortune et gratie, eidem sue Majestati a summo ac maximo Deo concessas copiosissime prosequabatur; promptam fortitudinis agilitatem, mirum temporantie moderamen, divinum justitie ardorem, junctam clementie erga subditos benignitatem, subditorumque erga eandem suam Majestatem obedientiam ac debitam observantiam

multa per exempla declarabat, subditorum fidelitatis et amoris excellentiam probando, quasdam literas indentatas subsidium quoddam multarum millium librarum summas in se continentes Regie optulit Majestati, argumentum fuit certe evidentissimum munificentissimorum ac liberalissimorum erga suum Regem subditorum."

² 1 Lords' Journ. 9. The form of assent to a money bill in 1705, as now, is—"La reyne remercie ses bons sujets, accepte leur benevolence et ainsi le veult."—18 L. J., 107.

the Staple at Calais, entitled "For Attornies and Factors at Calais," appears in the Parliament Rolls with the Royal assent of "Soit fait comme il est desire," as though it were a private Act. This form of assent is run through with a pen, and "Le R. le veut" is written instead. So it is entered on the Roll in Chancery.¹

In the early Journals of the Upper House there are few entries recording the Royal assent to Bills, and for many sessions of Parliament we are left to the statute rolls for evidence of measures which received statutory effect. Henry VIII. and his immediate successors appear to have attended² the sittings frequently; but before his reign the custom was to postpone the Royal assent to all Bills until the end of each Session. The first use of Commissions as substitutes for the royal presence was made by him.

In the Act for the attainder of Queen Katherine,³ both Houses besought his Majesty that as they with one assent were "agreed and accorded upon this Acte, it should not be requisite to trouble your Majesty for access in your most Royal person to the Upper House to assent to the same, nor convenient that your Majesty's royal assent should be protracted to the end or prorogation of this Parliament." For more speedy punishment, therefore, of the offenders against

Assent to Bills
by Royal
Commission.

Attainder
of Queen
Katherine,
A.D. 1542.

¹ 1 Stat. of the Realm, Int. App. E. p. 71.

² See 1 Lords' Journ. passim. Henry VIII. was present twice in the first week of the Parliament held in 1514; and on the second occasion knighted the Speaker, Thomas Nevil, a half-brother of Lord Abergavenny, in full Parliament. According to the entry in the Lords' Journals on this occasion, on being presented to his Majesty, that the choice of the Commons might be ratified, Mr. Speaker "ita egregie, eleganter, prudenter, et discrete, in negotio sibi commissio, se gessit, ut, omnium presentium plausu et letitia, maximam sibi laudem com-

paravit; cujus laudi Sacra Regia Majestas non modicum eximium honoris cumulum adjecit, nam presentibus et videntibus dominis spiritalibus, temporalibus et regni Communibus, eum equitis aurati honore et dignitate, ad laudem Dei et sancti Georgii, insignivit, quod nemini mortalium per ulla ante secula contigisse audivimus" (ib. 20). Queen Elizabeth was present in 1562 on two consecutive days (ib. 581-2), and on other occasions her name heads the list of attending peers, without further allusion.

³ 33 Hen. VIII. c. 21, printed in 3 Stat. of the Realm, 557; May, 593.

General
enactment.

whom the Act was directed, the King was asked at once to sanction the Act by letters patent signed with his own hand, and put under the great seal, such assent to be notified and published in the higher House to the Lords and Commons there assembled for that purpose. "To avoid all doubts and ambiguities hereafter," it was also provided "that the King's royal assent by his letters patent under his great seal, assigned with his hand, and declared and notified in his absence to the Lords spiritual and temporal, and to the Commons assembled together in the high House is, and ever was, of as good strength and force as though the King's person had been there personally present, and had assented openly and publicly to the same." Further, the Act provided that "all other Royal assents hereafter to be so given by the Kings of this realm, and notified as is aforesaid, shall be taken and reputed good and effectual to all intents and purposes, without doubt or ambiguity, any custom or use to the contrary notwithstanding."¹

Voiding of
Bill for Duke
of Norfolk's
attainder.

A private Bill for the Duke of Norfolk's attainder, assented to by commission just before the death of Henry VIII., was declared void by another private Act promoted by the Duke in 1st Mary.² In the recitals the reasons assigned for voiding the attainder are, because the commission did not show that the King himself assented to the Bill, and also because the commission was not signed with the King's hand, but was stamped, and in the wrong place. All that was done, therefore, by virtue of the commission "was clearly void in the law, and made not the same Bill to take effect, or to be an Act of Parliament," but only a bill exhibited in Parliament, and assented to by Lords and Commons, and not by the King.³ It is necessary, therefore, for the validity of an Act,

¹ 33 Hen. VIII. c. 21, s. 5; 3 Stat. of Realm, 859.

² There is no journal of either House recording the proceedings in Parliament in this Session.

³ 1 Mary; 1 Stat. of Realm, Int.

pp. 75-6. This Act was printed there at length for the first time, from its general importance as bearing on the ratification and evidence of statutes. The substance of the Act is given *post*, pp. 357-9.

assented to by commission, that the commission should be properly executed, so as to satisfy the requirements of the statute of 1542. But in 1702, William III. signed with a stamp the commission assenting to the Abjuration Act.¹ Again, during the illness of George IV., a message was received from the King announcing to Parliament that he was suffering from severe indisposition which made it painful to him to sign public instruments. An Act was, therefore, passed² dispensing with the sign manual, and enabling the King to appoint persons who, in his presence and at his command, might stamp his signature upon commissions for the passing of Bills.³

Sign Manual
Act, 1830.

In 1830, a public Bill to amend the law relating to the employment of Children in Cotton Factories received the Royal assent by commission and thereby became an Act⁴ before it had gone through all its stages, an amendment made by the Lords not having been communicated to the Commons. A Committee was appointed by the Lords to inquire into the mistake, and at a conference the Commons requested an explanation. At another conference this explanation was communicated, and being deemed satisfactory by the Commons, they introduced a Bill to render the previous Act valid. This Bill was accordingly passed with the utmost despatch, Standing Orders being dispensed with; and it received the Royal assent in the usual course.⁵

Cotton
Factories
Bill.

It became necessary to pass an Act to rectify a mistake which had occurred in 1844 in giving the Royal assent, by commission, to two Eastern Counties Railway Bills. One of these was called the Eastern Counties Railway Bill; the other, the Eastern Counties Railway (Brandon and Peterborough Extension) Bill. The latter of these Bills, which had not gone through all its stages in the House of Lords, was inserted in the commission and, accordingly, on May 10th received the

Eastern
Counties
Railway
Bills, 1844.

¹ May, 594, citing 5 Macaulay's Hist. 308.

⁴ 10 Geo. IV. c. 62.

² 11 Geo. IV. c. 23.

⁵ 61 Lords' Journ. 597-9; ib. 601-5; 10 Geo. IV. c. 63.

³ 62 Lords' Journ. 732, 766.

Royal assent instead of its sister Bill, which had passed both Houses. The amending Act provided that when the Eastern Counties Railway Bill received the Royal assent, it should be as valid and effectual to all intents and purposes from May 10, 1844, as if the title thereof had been properly inserted in the commission, and it had received the Royal assent on that day; and that the Brandon Bill and all proceedings thereupon should be "in the same state as if the title thereof had not been inserted in the commission," and should not be deemed to have received the Royal assent.¹

¹ 7 Vict. c. 19; May, 607.

CHAPTER III.

INGROSSMENT OF PRIVATE BILLS AND ACTS: INROLMENT AS
 STATUTES: DRAFTED IN STATUTORY FORM BY JUDGES:
 PROTESTS BY COMMONS AGAINST DELAY IN DRAFTING:
 ANCIENT RECORDS AND LANGUAGE OF STATUTES: FIRST
 PRINTED COLLECTIONS OF ACTS: ORDINANCES: MODE OF
 CERTIFYING PRIVATE ACTS: PROMULGATION.

IN the year 1399 the Commons seem to have asserted some claim to a share in the private and personal business disposed of by the Lords, but were sharply told by the Archbishop of Canterbury, at the King's command, that they were merely petitioners, and that the King and Lords held the right of judgment in Parliament, unless it were in statutes, grants and subsidies, or other matters affecting the common good (*ou tiels choses a faire pur commune profit du royaume*), when the King wished to have their advice and assent.¹

When, however, in the reign of Henry VI., legislation took its modern form, and the Commons as well as the Lords of Parliament claimed control over all Bills, private as well as public, some record became necessary in each House of the alterations made by its authority in any proposed enactments. Such a record was supplied by the ingrossment of Bills, the changes made in them being carefully noted and embodied in the authorized copies exchanged between the two Houses.

A Bill was ordered to be ingrossed only after it had been amended in Committee, and the work was performed in the House in which a Bill originated. A motion for its ingrossment was necessary in each case. Rolls of parchment sewed together were used. There was a clerk of ingrossments in the Lords; in the Commons there was also an ingrossment office.

Bills in-
grossed, and
alterations
recorded.

Stage at
which Bills
were in-
grossed.

¹ 3 Rot. Parl. 427 (1 Hen. IV.).

On private Bills ingrossment fees of considerable amount were charged. A small staff of clerks was kept in the two Houses to discharge these duties, assisted by experts outside at any period of pressure. If amendments were made on the third reading, subsequent to ingrossment, they were interlined upon the ingrossed copy. A new clause or proviso was ingrossed on parchment, and, if adopted, was "tacked" on the Bill and called a "rider."¹ The ingrossed copy was then marked by the clerks, with the message already noticed and appropriate to each House: if the Bill were in the Commons,—"*Soit baillé aux Seigneurs avecque un proviso annexe,*" or clause or schedule.

The ingrossment of private Bills occupied a special department and a numerous staff. Notwithstanding all the efforts of this staff, however, much delay frequently occurred, especially when railway Bills became numerous, and before their bulk was reduced by the passing of the Consolidation Acts.

Examiners of
ingrossments.

To ensure accuracy in transcribing, there were clerks called examiners of ingrossments, and appointed upon the recommendation of a Committee which sat in 1810.² It was their duty to certify on the back of each Bill, before the third reading, that they had compared the ingrossment with the House copy of the Bill, and that it agreed with the Bill as amended by the Committee, and by them reported.³ With a view to the third reading, the ingrossment was laid on the table, tied up with the House copy, and the motion was "that the ingrossed Bill, for [title], be now read a third time." Petitions, or Bills, of grace or pardon, endorsed *coram rege* that the triers might not answer them, *rege inconsulto*, came to the Lords ingrossed on parchment, and signed by the King before they were con-

Bills of grace.

¹ Both are still Parliamentary terms, though with the abolition of ingrossment their original sense of a separate parchment tacked or fastened to, and riding or borne on, the original roll has been wholly

lost.

² Commons' Committee on Private Bills, 1810 (Sess. Paper 301).

³ Standing Order 53, House of Commons, 1832.

sidered in either House, and so that they could not be amended or added to.¹

Each roll of parchment on which Bills were written out "Presses." was about 27 inches by 12, and was known as a "press." These "presses" were stitched together, and during the last two hundred years usually, in the House of Commons, contained about forty lines, averaging twenty-five words apiece, or a thousand words in each skin. Before the reign of Henry IV. a small ingrossing hand was used, very closely but clearly written, and containing ten times the number of letters just mentioned; after that time the writing was larger, and a mixture of ingrossing and round-hand. About the end of the 17th century the use of the proper ingrossing hand was resumed and continued until superseded by printing. In the Lords the writing was more minute than in the House of Commons. Occasionally no fewer than 100 copyists were employed for the service of the House of Commons alone.²

Characters
used in writ-
ing.

After receiving the Royal assent, the local and personal Acts and all Acts having clauses which made them, when printed by the King's printer, evidence in Courts of Justice, were, in addition to the public statutes, fair-copied from the Parliament rolls for inrolment in Chancery. Since their first commencement in the reign of Richard II., the writing of these Chancery rolls was always the old court-hand, which occupied about half the space of the ingrossing-hand. The parchment was tied up in rolls, from a belief that, though rolls were inconvenient for reference, they were safer from damp and dust than in book-form. During the Commonwealth the use of the court-hand was abolished in making records. Before the reign of Henry VIII., all the Acts of one Parliament were contained in one roll. After that period

Inrolment in
Chancery.

¹ For these Acts the Clerk of the Parliament used to thank the Crown in these terms:—"Les prélats, seigneurs et communes en ce présent Parlement assemblés, au nom de tous vos autres sujets, remercient

très humblement votre Majesté, et prient à Dieu vous donner, en santé, bonne vie et longue."

² Commons' Committee upon the Method of Ingrossing Bills, 1823; Minutes of Evidence, pp. 2-25.

each Act formed a roll by itself. One Act is mentioned as containing six hundred "presses," making a roll nine hundred feet in length, and occupying from an hour and a-half to two hours in unrolling and rolling-up again.¹ The use of court-hand in the records of the Courts of Law was abolished by statute in 1731—3.²

Conferences
and Lords'
Committee in
1836.

At conferences held between the two Houses in 1836,³ resolutions were communicated by the Commons to the Peers declaring the expediency of discontinuing the ingrossment of the statutes in black letter, and of substituting "a plain round-hand." A Select Committee of the House of Lords was at once appointed to consider this matter, and had before them several specimens of early Acts and records, with a view to ascertain the relative merits of the two methods of ingrossment.⁴ The first Act so examined, 3 James I., was written in the old court-hand, and legible. An Act, 16 Charles II., in round-hand, was also legible. Four Acts, 7 & 8 Wm. III., were ingrossed, excepting the titles, which were in round-hand. The ingrossment was legible: the round-hand imperfectly so. The same results were noted in examining an Act, 9 Wm. III., and two Acts, 12 & 13 Anne. Ingrossed Acts of Wm. III. and 18 George II. were quite legible; a round-hand appeal, in 13 Anne, was imperfectly legible; the answer to it, ingrossed, presented no difficulty. The clerk of the Journals, who had been in the habit of ingrossing the statutes, stated that he could write in the ingrossing hand on parchment twice as fast as he could write the large round-hand, which was proposed as a substitute, while the uniformity

Examination
of old Acts.

¹ Commons' Committee of 1823, p. 27. This was a public Act relating to the Land Tax, passed at the beginning of every Parliament, when new Commissioners were nominated. Each Road Bill averaged 115 "presses" before the passing of the General Turnpike Act; afterwards these private Acts averaged 40 presses; another instance of the

value of Consolidation Acts.

² 4 Geo. II. c. 26; 6 Geo. II. c. 14, requiring all law pledges, deeds, &c., to be thereafter written in English.

³ February 9 and 15.

⁴ Lords' Committee on Promulgation of Statutes and Ingrossment, 1836.

of style and characters was such that persons who could then read the ingrossing hand, could as easily read that used for centuries past.¹ Private Acts of Parliament were then written in the Chancery court-hand, which differed from the old court-hand; the latter was generally employed for Latin records, but in 1836 was almost extinct.²

According to the experts examined in 1836, the ingrossing hand was much more lasting than round-hand; the pen, a turkey-quill, was broad-nibbed, penetrating to some degree the substance of the parchment; the down-strokes and up-strokes were of the same thickness, and the quantity of ink laid on the parchment was at least twice as much as in round-hand. This was given as the reason why title-deeds were always ingrossed; and the originals of our statutes, it was urged, ought not to be less enduring. As ingrossing was done so much more rapidly, a formidable objection to round-hand was the additional delay which would occur in the progress of Bills, if it were substituted. Private Bills would be especially hindered, and promoters would be put to great additional expense in the attendance of parties and witnesses.³

Ingrossing more enduring than round-hand;

and more rapidly written.

For these and other reasons the Lords' Committee came to the conclusion that no mode of writing on parchment could be advantageously substituted for the ingrossing hand. Round-hand, they admitted, might be more quickly read. But it rarely happened that there was any occasion for reading quickly the parchment originals of our statutes. The object was rather to preserve a uniform, permanent, and correct record of the Acts of the Legislature, which should be legible at a distant period with ordinary care. As a number of writers must be employed where speed was necessary, there would be an unseemly difference in round-hand characters

Ingrossment continued by Lords.

¹ Ib.; evidence of Mr. Parratt, p. 7. See also to the same effect the evidence of Mr. Bush, law stationer, p. 8.

² Ib. p. 8.

³ Ib.; evidence of Mr. Rickman, clerk-assistant in the House of Commons, p. 14.

of the same Bill, for no man could alter at pleasure his usual handwriting, whereas every man who acquired a technical habit of ingrossing wrote that hand undistinguishably from others if all bestowed equal care upon their work.¹ Another reason why the Committee of 1836 refused to substitute round-hand for ingrossing, was the greater facility which round-hand gave for falsifying a statute by interpolation or otherwise. The utmost concession which the Committee would make was that, as the difficulty of reading proper names aright was the chief objection to the ingrossing hand, these should in future be written in round-hand.²

This decision by the House of Lords in 1836 caused the continuance of the ancient practice of ingrossing Bills and Acts for thirteen years. The wonder is, that it survived so long, side by side with the facilities offered by printing, and the free resort to printing by both Houses for all other purposes. In 1849 the House of Lords themselves took the initiative, and passed resolutions,³ concurred in by the Commons after repeated conferences, dispensing with the system of ingrossment and giving authority to the present system. Instead, therefore, of being ingrossed, every Bill is now printed fair immediately after it has passed the House in which it originates. It is then sent to the second House, where amendments, if any, are introduced and authenticated. On its return to the first House, these amendments are settled and agreed to. When in its final shape, what are known as Act-copies of private Bills are printed; these are complete, but the chapter by which the Act is afterwards cited is not attached to them. Then, before the Royal assent is signified, the Queen's printer furnishes to each House two copies of each Bill, printed on vellum. One of these copies is next authenticated by the proper officers of each House, as the Bill to which both Houses have agreed. The Royal assent is then

Printing substituted for ingrossment.

Act-copies.

Authenticated prints of Acts on vellum.

¹ Lords' Committee on Promulgation of Statutes and Ingrossment, 1836, p. 14.

² *Ib.*; Report, p. 3.

³ 81 Lords' Journ. February 8, 1849 *et seq.*

endorsed in the usual form on the print so authenticated, which is deposited in the Record Office in lieu of the ancient ingrossment. In the case of Public General Acts, the Master of the Rolls receives one of the duplicates before-mentioned, to be held by him for reference and verification, if need be, as were the inrolled Acts. Private Bills were not relieved from the necessity of ingrossment until 1850.¹ They are authenticated, and, after receiving the Royal assent, are recorded in like manner.

Some attention may now be given to the ancient system, long in use, of leaving the Judges to put all statutes into formal shape, after they had been in substance agreed to in Parliament. The Parliament rolls, as we have seen, consisted of the original petitions, whether for public or private objects, followed by the King's answer, with or without modifications. Both petition and answer were generally models of brevity. It was the duty of a Council of the Judges, and of experts who were called to their assistance, to draft in more precise form such of these petitions, if assented to by the Crown, as could not be granted "sans novel ley." But this duty was undertaken not at the end of each Session, but only upon the dissolution of each Parliament. One reason for this delay may have been that it was not until the end of each Parliament that the Parliament rolls were ingrossed. Then, but not before, the Judges had authentic materials out of which to shape the formal statute, dividing it into chapters, or "articles" as they were originally termed. It was next shown to the King, and, after receiving his approval, was ingrossed for enrolment in Chancery, sometimes with, sometimes without, a preamble. At the conclusion there was a clause of *Observari volumus*.²

Petitions assented to by king in Parliament drafted into statutes by Judges.

The Commons often remonstrated against a system so open

Mistakes arising

¹ They had been for the most part already printed, in compliance with Standing Orders, when the two Houses agreed to discontinue the system of ingrossing public Bills in 1849.

² 1 Stat. of Realm, Int. pp. 34-5.

through
delay in en-
tering on
statute rolls.

Remona-
trances of
Commons,
1335-82.

to mistake and abuse. Sometimes a statute agreed upon by Parliament was not entered in the rolls. Sometimes provisions never sanctioned by Parliament were added, and those which had been sanctioned were omitted. An instance is cited of "a statute made to which the Commons did not assent, and even to which neither Lords nor Commons assented."¹ As early as the year 1335, the Commons in their petitions called attention to the unjustifiable alterations made by the Judges in the statutes entered upon the statute rolls. The practice, however, continued. Thus, in 5 Richard II. (A.D. 1382), sheriffs of counties received powers by ordinance to arrest preachers of heresy; but in the next Parliament the Commons declared that such law was never assented to or granted by them; what had been proposed in this matter was without their concurrence; and they prayed that the statute should be annulled, for "it was never their intent to bind themselves or their descendants to the Bishops more than their ancestors had been bound in time past."² The King in his answer agreed to this petition, but the ordinance was not expressly repealed. When such abuses of authority were possible in public statutes, to which public attention was sure to be called, equal or greater abuses must doubtless have existed in the rendering of private Acts, which only affected particular persons or places.

2nd Hen. IV. In the year 1401, the Commons again mooted this signal grievance, praying that all statutes passed in the Parliament then in session should be enacted and ingrossed without delay while the judges had them in mind. To this complaint they received a vague and unsatisfactory reply:—"Les dits Communes prierent a nostre Sr. le roy que les bosoignes faites et affaires en cest Parlement soient enactez et engrossez devant le departir des Justices

¹ 1 Hale, P. C. 394; and see Int. to Stat. of Realm, p. 35 (note), and authorities there cited.

² 3 Rot. Parl. 141. This and other instances of perverted statutes

are collected in Hallam's Middle Ages. It is worth notice that the Commons speak of this ordinance as a statute.

tant come il les aient en leur memoire. A quoi leur feust responduz que le clerk du Parlement ferroit son devoir pur enacter et engrosser la substance du Parlement par advis des Justices, et puis le monstrar au roy et aux Seigneurs en Parlement pur savoir leur advis.”¹ Three years afterwards (A.D. 1404), the Commons complained that a Subsidy Act had been entered on the rolls of Chancery (entre en les rolles de la Chauncellerie) in a form contrary to the actual grant by them.² They therefore prayed the King that their intention in making the grant should be declared and determined in the Parliament then sitting, and should be properly recorded; and, further, that letters under the great seal should be addressed to the Barons of the Exchequer, requiring them to forbear from levying the subsidy in its untrue form.

In 1406, the Commons requested that certain members of their House should be present at the ingrossing of the Parliament rolls, and as a further precaution they asked that their petition to this effect should be expressly recorded. On this occasion, the Speaker, “Monsieur Johan Tibetot, en nom des ditz Communes, pria a nostre dit Seigneur le roy, et aux toutz les Seigneurs en Parlement, que certains des Seigneurs spirituelx et temporelx qui lour plerroit nommer, et auxi certains de les Communes de queux il avoit mys en escrit les noms en un cedula en Parlement, c’est assavoir, Johan Tibetot, Thomas Skelton, Johan Pelham, Johan Dalyngrugg, Lawrence Dru, David Holbache, Richard Baynard, Johan Wilycotes, Esmond Brudenell, William Staundon, Henry Somers, Nicholl Wotton, XI, X, VIII, VII ou VI, de eux, purroient estre assignez d’estre a l’enactement et l’engrossement du rolle de Parlement. Et pria outre, que cest prier et peticion purroit estre enactez de record en rolle du Parlement, les queux priers le roy gracieusement ad ottoiez.”³

In 1406 Commons ask to be present at ingrossment of rolls.

It was not until 1414 that the Commons obtained a remedy A.D. 1414.

¹ 2 Hen. IV.; 3 Rot. Parl. 458.

³ 3 Rot. Parl. 585; A.D. 1406.

² 6 Hen. IV.; 3 Rot. Parl. 556.

Remedy pro-
mised by
Henry V.

Change to
existing
system, circa
1485.

Want of pre-
cision in
modern Acts.

for their repeated complaints. In that year they once more protested against the system of reducing petitions or Bills into statutes, declaring that "hit hath ever be thair liberte and freedom that thar sholde no statute ne law be made offlasse (unless) that they yaf thereto their assent; considering that the Comunes of your lond, the whiche that is and ever hath be a membre of youre Parlement, ben as well assentirs as petitioners." The King's answer was, that "fro henceforth nothyng be enacted to the petitions of his Comunes that be contrarie of their askyng wharby they shuld be bounde without their assent," saving and excepting "his real prerogatif to grant and deny what him luste of their peticions."¹ The judges were accordingly ordered to complete their work of drafting the statutes before Parliament was dissolved, when errors or false rendering might be corrected. Still there were complaints that changes were made, by inadvertence or design, in the words, and sometimes the substance, of the measures agreed to by Parliament. It was not until the close of the reign of Henry VI. that Bills began to be passed in a completed form by the two Houses. From 7th Henry VII.² all Bills continued to be so passed, owing nothing to judicial aid for their final shape as statutes, and only requiring to be copied and ingrossed for entry on the statute rolls in Chancery.

Though liable to abuses in practice, there was something to be said in principle for a system by which, after the will of Parliament was expressed, it was put by experts into precise statutory form. In our own day much avoidable litigation has been caused, and unnecessary labours have been thrown upon the judges, through the imperfect and doubtful wording of statutes, adopted in haste, perhaps in the last hours before

¹ 4 Rot. Parl. 22; A.D. 1414. The petition is cited in Dwaris, 36, as the earliest instance in which the Commons used the English language in their written proceedings. The Record Commissioners say that

the first use of the English language in any Parliamentary proceeding occurred in 36 Edw. III., when the causes of summoning Parliament were declared "en Anglois."

² Int. to Stat. of Realm, p. 35.

prorogation, and leaving no time for necessary correction.¹ Two hundred years ago the same evil was felt and expressed by Sir Edward Coke. The greatest questions in law, he says, "arise not upon any of the rules of the common law but . . . oftentimes upon Acts of Parliament, overladen with provisoes and additions, and many times on a sudden penned or corrected by men of none or very little judgment in law. If," he adds, "Acts of Parliament were after the old fashion penned, and by such only as perfectly knew what the common law was, before the making of any Act of Parliament concerning that matter, as also how far forth former statutes had provided remedy for former mischiefs and defects discovered by experience, then should very few questions in law arise, and the learned should not so often and so much perplex their heads to make atonement and peace by construction of law between insensible and disagreeing words, sentences and provisoes, as they now do."² In the opinion of some of the judges of to-day these words still stand good; though they apply to public rather than to private statutes, a result due to the skill of the experts by whom private Bills are generally drawn, to the careful supervision of the Chairmen of Committees in both Houses, and the responsibility attaching to the agents, of opponents as well as promoters, throughout every stage of each measure.

Sir E. Coke on
the drafting
of statutes.

¹ See Commons' Committee of 1875 on the best means of improving "the manner and language of current legislation"; evidence of the Master of the Rolls (Sir George Jessel), Vice-Chancellor Sir Charles Hall, and Mr. Justice Archibald. There was general agreement among the learned persons examined before this Committee that the evils noticed in the text, though much to be deplored, were beyond practical remedy. See also Report of Commons' Committee of 1857 upon complaints made by the Statute Law Commissioners of "the verbose and obscure language" of statutes, and the confusion arising

from inconsistent amendments hurriedly made in Parliament while Bills are passing through Committee. One suggestion offered to the Committee of 1875 by Mr. (now Mr. Justice) Stephen (p. 31) was that, as in India, statutes should hereafter be distinguished by the chapter and date of enactment instead of by the year of each reign—*e.g.* Act 61, 1884, instead of 47 & 48 Vict. c. 61. Brevity and certainty in citation, and space in printed reference, would here be advantages worth a departure from ancient usage.

² Coke's Reports, Preface to Part 2.

Existing records of Acts.

1. Statute rolls, 1278-1468.

The explanation given of the materials from which our ancient Acts of Parliament were derived, will now render intelligible some account of the ingrossed records still extant. These are, first, the statute rolls, a series of Acts, reduced into form by the Judges, and dating from the statute of Gloucester (6th Edw. I.), in the year 1278, down to 1468. There is a break of fifteen years in the reign of Henry VI., but with this exception these rolls, which are records of Chancery, give, in a regular series, the Acts passed and afterwards drafted in successive reigns during the above period. There are no more than six separate rolls, each consisting of several membranes tacked together. Some evidence exists that statutes continued to be drawn up by the Judges and inrolled in Chancery for some twenty-five years after 1468, but none have been preserved since that date.¹

2. Original Acts preserved in Parliament office.

Next in order may be mentioned the original Acts preserved in the Parliament office, consisting of the Bills ingrossed by order of the House in which they originated, showing all subsequent additions or erasures, with the indorsements of the clerks in both Houses, and in the state in which they received the Royal assent. These original Acts date only from the period when Parliament acquired a complete control over legislation. The Parliamentary rolls containing the original Acts are extant, with a few breaks of continuity, from 12 Henry VII. (A.D. 1497). Since 1849 printed copies have taken the place of the ingrossed Acts. Each Act is on a separate roll. Some of the earlier rolls, besides being difficult to decipher, through interlineations and erasures, have not always been preserved with exemplary care. Thus complaint was made by the Commons in 1661, that a clerk in the Lords' House permitted the original rolls of Acts of Parliament to be carried to the printer, by whom they were "ripped in pieces, blotted and abused, and in danger to be embezzled or altered," and a message was sent desiring the Lords to order that these rolls "be kept in the office and not delivered to the printer, but that true copies, fairly written,

Neglect in 1661.

¹ Stat. of Realm, Int. p. 35.

and carefully examined and attested, be delivered to him.”¹ Generally there is no indorsement on the original Acts to show in what year or in what Parliament they passed. They are tied up separately, and rolled together in one roll of parchment marked with the year of the reign, and buckled round with a thong of leather. Many Acts are missing.²

A third series of records of the statutes exists in the inrolled Acts, made up by the Clerk of the Parliaments from the original Acts, and then certified by him, and delivered for safe keeping into Chancery as authentic duplicates of the originals. The Chancery inrolments are more complete than those in Parliament. They are preserved in the Record Office in an uninterrupted series from 1st Richard III. (A.D. 1483), excepting the statutes passed during the Commonwealth. They therefore cover part of the period represented by the statute rolls, but after 5 Hen. VII. they may be considered in effect as coming in the place of the statute rolls.³ Before printing was substituted for ingrossment, many private Acts were recorded only in the Parliament roll, though the Chancery inrolments still contained the local and personal Acts declared to be public. Down to the 25th Hen. VIII. these inrolments comprised transcripts, duly certified by the clerk of the Parliaments, of all Acts, public and private, which were passed in each Session. From the 25th Hen. VIII. to 35th Eliz. several of the private Acts, and afterwards to 3rd Chas. I., all the strictly private Acts were omitted, their titles only being noticed. From the 16th Chas. I. to 31st Geo. II., the enactments contained nothing but the public Acts and the titles of the private Acts, with the several forms of assent; and from 32nd Geo. II. their contents are the same, with the omission of the titles of the private Acts.⁴

3. Inrolments of Acts in Chancery.

Private Acts inrolled.

In 31st Hen. VIII. the introduction at the head of the Chancery roll for the first time defines the contents as statutes passed in a Parliament, the time and place of which are

Public and private Acts distinguished on Chancery rolls.

¹ 4 Com. Journ. 343 (Jan. 11, 1661).

³ Ib. pp. 34-5.

² Stat. of Realm, Int. p. 70.

⁴ Ib. pp. 35, 66.

specified, and makes a precise distinction between public and private Acts, as follows: "In Parlamento inchoato, &c. [date] communi omnium Dominorum tam spiritualium quam temporalium, ac Communitatis consensu, ac Regie Majestatis assensu, inactitata ac stabilita fuerunt hec sequentia statuta, viz. Actes Publique." Then there is a list of the titles of the public Bills; afterwards come "Actes Private," with a list of the titles. Then follow the Acts of both classes, in a regular series, each having, with the introduction already mentioned, the words: "Exhibita est Regie Majestati, in Parlamento predicto, billa quedam, formam Actus in se continens;" and at the end of each: "Cui quidem Bille perlecte et ad plenum intellecte per dictum dominum Regem ex autoritate Parlamenti predicti sic responsum est."¹ The Royal assent, appropriate to each class of Bill, next follows.

Private Acts,
16th Chas. I.

In the session of 1641, the Chancery inrolment shows some variations from the forms just given. After the public Acts, each in its order, have been set forth and sanctioned, the private Acts are thus introduced: "Item quedam petitiones, privatas personas concernentes, in se formam Actus continentes, exhibite fuerunt predicto domino Regi in Parlamento predicto, quarum tituli subscribuntur, viz. Private Acts." Then a list of titles only is given, and at the end of the list: "Quibus perlectis et ad plenum intellectis, per dominum Regem de avisamento et assensu Dominorum spiritualium et temporalium ac Communitatis in dicto Parlamento existen., ac autoritate ejusdem, taliter ut sequitur eisdem singulatim est responsum, viz.: 'Soit fait come il est désiré.'" This form continued to 31 Geo. III. inclusive, after which the list of the private Acts, and its introductory and concluding forms, were wholly omitted.¹

Language of
charters and
statutes.

Until the beginning of the reign of Henry VII., charters or statutes were sometimes in Latin and sometimes in French. Since then the language of the statutes has been uniformly English. The petitions or bills on which the

¹ Stat. of Realm, Int. 66.

statutes were founded began to be generally in English early in the reign of Henry VI.; but the statutes continued to be enrolled in French or Latin. Sometimes Latin and French were used in the same statute.¹ The last statute wholly in Latin is 33rd Henry VI.; the last portion of any statute in Latin is 39th Henry VI. c. 2. The statutes of Edward IV. and Richard III. are in French. Those of Henry VII. have always, it is believed, been published in English, though there are manuscripts showing that some of his earlier statutes were also in French. After the fourth year of his reign they were universally in English. In Ireland the use of the French language in statutes was preserved till a later period.²

The first printed edition of Acts, in Latin and French, is supposed to have been published about 1481. The statutes passed in the only Parliament holden by Richard III. were printed in French, by Caxton or Machlinia, or both those printers, soon after they were passed, this being the first instance of a periodical publication. In 1557, William Rastall, or Restell, a serjeant-at-law, afterwards made a judge, published a collection of all the statutes, mentioning briefly those of a local or private nature. In his preface, he says:—"I have put every statute in the tongue that it was first written in. For those that were first written in Latin or in French dare I not to presume to translate into English for fear of misseinterpretacion. For many wordes be there in divers statutes, both in Latin and in Frenche, which be very hard to translate aptly into English." However, in subsequent editions the work of translation was attempted.³

First printed collection of Acts, circa 1481.

Sir Edward Coke says that "Acts of Parliament are many times in form of charters or letters patent."⁴ Such charters or letters patent were recognized as of legislative authority, and some have been inserted in all editions of the statutes. It might have been supposed that local and personal matters only would be dealt with in this way or by ordinances, but

Charters, letters patent, and ordinances.

¹ 8th Hen. VI.; 27 ib.; 33 ib.

² Stat. of Realm, Int. p. 41.

³ Ib. 21, 22.

⁴ 2 Inst. 525; and see also the Prince's case, 8 Rep. 13.

there is no trace of any such distinction. Questions affecting the whole community seem to have been disposed of in all these methods.¹

Distinction
between
ordinances
and statutes.

A distinction sometimes drawn between ordinances and statutes is that the former embodied a compliance with petitions involving no departure from the existing law; while the latter sanctioned proceedings not known to or inconsistent with the existing law.² But this distinction does not hold good in particular cases. An ordinance of 1382, already mentioned, must have been regarded by the Commons themselves as of statutory effect, and so indeed they described it.³ Another distinction, equally untenable, is that ordinances were entered on the Parliament rolls, but not on the statute rolls;⁴ the fact being that, in the reign of Edward III. ordinances, so termed, are in some instances inrolled as statutes, and contain clear words of enactment, even repealing penalties inflicted by former statutes.⁵ That, though perhaps of equal validity, ordinances did not rest on the same undoubted authority as statutes seems clear from a complaint made by the Commons in 1st Edward III. (1326—7), in answer to which the King directed that ordinances should be examined, and that such as were good should be made into a statute and the others annulled. (“Quant a les ordinaunces, soient veues et examinez, et les bons soient mis en Estatut, et les autres soient oustez.”)⁶

Complaint of
Commons as
to ordinances,
1326—7.

Optional
inrolment of
private Acts.

A difference in the method of inrolling Bills which were “common” and those which were “particular,” or, in modern phraseology, public and private Bills, is noticed by Kirkby, Master of the Rolls (33 Henry VI.), who certifies the practice to be as follows. After describing the passing of the Bill, he says:—“Si ce soit un commune bill, il sera enrole et

¹ Stat. of Realm, Int. 31.

² Dwaris on Statutes, 17, 18.

³ *Ante*, p. 324, note.

⁴ Dwaris, 17, 18.

⁵ 1 Stat. of Realm, 32, and note.

⁶ 2 Rot. Parl. 7, 11. There is an instance at this period of an ordi-

nance made without consent of the Lords (*ib.* 9). See also 3 *ib.*, 17, where the Commons pray that the King's answer to their petitions, “Le roy le voet,” may have the force of a statute, and not of an ordinance (1 Rich. II., A. D. 1377).

enacte ; mais si soit un particulier bill, il ne sera enrolle, mais sera file sur le filac et est assez bien ; mais si la party veut suivre pur l'entre pour estre le mieux seur, il purroit estre enroulle.”¹ The ordinary practice, therefore, then was to file a private Act, but promoters might, for greater certainty, have their private Acts inrolled in Chancery, if, probably, they chose to pay the fees charged for ingrossment and entry on the rolls.

When private Acts were not inrolled and delivered into Chancery, and were not printed among the local and personal Acts, the originals, filed in Parliament and stamped with the Great Seal, were the only records of such Acts.² If they were required to be put in evidence, a writ of certiorari was issued in Chancery and directed to the clerk of the Parliaments, who thereupon returned a certified copy which the Courts recognized as valid and binding. The mode of certifying private Acts into Chancery in compliance with such writs is thus prescribed in the Lords' Journals of 1597 :³—“ Notes to be written at the beginning and ending of private Acts when they are certified into the Rolls, *videlicet*,—“ In Parlamento inchoato et tento apud Westm. 24^o die Octobris, anno regni serenissimæ atque excellentissimæ Dominæ nostræ Elizabethæ, Dei Gratiâ, Angliæ, Franciæ et Hiberniæ Reginæ, Fidei Defensoris, &c., tricesimo nono, et ibidem continuato usque ad et in nonum diem Februarii tunc proxime sequentem, communi omnium Dominorum tam Spiritualium quam Temporalium et Communitatis consensu, et Regiæ Majestatis tunc præsentis assensu, inter alia, sancitum, inactitatum, ordinatum, et stabilitum fuit sequens hoc statutum, ad verbum ut sequitur.” [Act follows.] “Ego, Thomas Smyth, Armiger, Clericus Parliamentorum, virtute brevis supradictæ Dominæ nostræ Reginæ, de certiorando mihi directi, et hiis annexi,

Evidence of private Acts not inrolled.

Private Acts certified for inrolment, 1597.

“This to be written at the head of every such private Act.”

“This to be written at the foot.”

¹ Year-Book, 33 Hen. VI. ; Fitzh. Abr. tit. Parliament.

² The few private Acts not printed must still be put in evidence by cer-

tified copies from the Parliament office.

³ 2 Lords' Journ. 225.

certifico superius hoc scriptum verum esse tenorem Actus Parlamenti supradicti in eo breve expressi. In cujus rei testimonium, sigillum nomenque meum apposui atque subscripsi. Datum die —, anno regni supradictæ Dominæ nostræ Reginae, &c.'” The writ of certiorari was to be annexed to the Act certified, and was to bear the following indorsement, subscribed by the clerk of the Parliaments:—
 “Executio istius brevis patet in schedula huic brevi annexa.”

Ancient promul-
 gation of
 statutes.

From very early times Parliament acted upon the just principle that, as ignorance of the law was no excuse for non-compliance with the law, there should be some attempt to make known to the people the statutes as they passed the Legislature. Accordingly, before the discovery or use of printing, each statute¹ was published by means of transcripts, or exemplifications, made on parchment under the Great Seal, out of Chancery, and sent to the sheriff of each county, with writs annexed, requiring the sheriffs to proclaim and publish the statute throughout their jurisdiction, to see that it was observed, and sometimes to make and distribute copies, afterwards sending returns of what they did in compliance with the writs. Original writs and records of the 13th century show that the earliest statutes were published in this manner. The usage was for the sheriff to proclaim a statute at the County Court, where the transcript was kept for general information.² “Exemplifications” and writs were discontinued when the statutes were first printed at the end of each Session, a reform which was begun in the year 1484, and is due to Richard III. These printed sessional publications were then promulgated in the place of the parchment transcripts. They contained no private Acts.³

In Scotland.

In Scotland it was the duty of the Lord Clerk Register to enter Acts of Parliament in the proper record and to give

¹ It is doubtful whether private Acts were sent to the sheriffs for proclamation. The probability is that they were not.

² Dwaris, 16.

³ App. to First Report of Record Commission, 56.

authentic copies of them to the sheriffs, magistrates of boroughs, and other authorities. A precept is extant for proclaiming and publishing the statutes of Robert I., in the year 1318; and there exists also a Parliamentary ordinance made in the reign of David II. (1366), by which the Acts of that Parliament are directed to be sent under royal seal to each sheriff, to be by him publicly proclaimed. The earliest printed publication of statutes in Scotland was in the year 1540—1.

In Ireland the promulgation of such statutes as had been passed in England and transmitted to Ireland was regularly made by means of a transcript sent under seal from England, with a writ directed to the Chancellor of Ireland, requiring the same to be kept in the Chancery of that kingdom, to be there inrolled, and then to be exemplified under the Great Seal of Ireland, and sent unto and proclaimed in the several courts and counties throughout the kingdom. As to the statutes made in Ireland, several of these contain provisions for their special proclamation, so that the penalties inflicted by them should not be incurred until after such proclamation. It appears, also, that it was usual to proclaim the statutes in general under the King's writ, made out by the clerk of the Parliaments. Sessional publications of the Acts did not appear in Ireland before the reign of Charles I.; and such publications were not continued regularly and uniformly until after the Revolution.¹

It seems that ordinances were not as a rule, if ever, proclaimed by the sheriff; a strong presumption drawn from this fact being that, in the view of those who framed them, they contained nothing in derogation of the common or statute law, and therefore need not be promulgated for the information of the commonalty.² This view derives partial support from a petition presented by the Commons, A.D. 1327, that ordinances might be written and sealed with the Great

In Ireland.

Ordinances,
whether pro-
claimed.

¹ 1 Stat. of Realm, Int. 44; Private Stat. 16.

² Bramwell's Analytical Table of Dwaris, 17, 18.

Seal and delivered to the knights of the shire, to be proclaimed in each shrievalty.¹ On another occasion it was provided that ordinances should be proclaimed in Westminster Hall.²

Better promul-
gation of
statutes
ordered, 1797.

Fees on office
copies of
private Acts.

In the year 1797 a Committee of the House of Commons was appointed to consider the best method of promulgating the statutes, and conferences were held with the Lords on the subject.³ Up to that period 1,126 copies of the public statutes appear to have been printed and distributed to public departments and functionaries, judges and magistrates at the public expense, but there was no similar promulgation of private statutes, which were then printed only for the use of the parties. Some of the officials in the House of Lords derived considerable emoluments from the fees there charged for certified copies of private Acts, which, after having been compared with the originals in the Parliament office at Westminster, were admitted in evidence. It was thought just to try to reconcile these vested interests with a proposal to print local Acts for general use and information. A resolution agreed to by both Houses, therefore, directed—"That, for the purpose of effectuating the promulgation of private statutes, and also of ensuring an adequate compensation to the clerk of the Parliaments and officers of the House of Lords, in lieu of their annual average emoluments arising from the office copies of such statutes, without bringing any new charge upon the public, the parties interested in every such statute should make good such expense and compensation; and that, thereupon, such printed copies of every such statute should be made judicially admissible in evidence."⁴

¹ 2 Rot. Parl. 10.

² Ib. 62.

³ 41 Lords' Journ. 185.

⁴ Ib. 268. From this period dates the printing of the public and private statutes in separate volumes, in accordance with the following joint resolution (ib.):—"That his Majesty's printer should also be autho-

rized and directed to class the general statutes and the special statutes (viz. the public, local and private Acts) of each Session in separate volumes, and to number the chapters of each class separately, and also to print one general title to each volume, together with a general table of all the Acts passed in that Session."

Accordingly, “200 copies of each public local and private statute,” were ordered to be printed and distributed, along with 3,550 copies of each public general statute, instead of 1,126.¹ It appears that the compensation intended to be secured “to the clerk of the Parliaments, the clerk assistant, and the other officers of the House for any loss they might sustain by the printing of the local and private statutes” was not satisfactory, for the Lords’ Committee on this subject was revived in the following Session. It was found difficult to fix upon any average sum as the basis of compensation. At the instance, therefore, of their Committee, the House of Lords resolved:—1. “That the copy fee to be paid to the clerk of the Parliaments and the clerk assistant by the party or parties interested in any private Bill, who shall request a clause to be inserted therein that the same may be declared a public Act, shall be the same as is now paid, and has been established ever since the year 1725, for the copy of any record or proceeding in Parliament (*videlicet*) one shilling for every copy sheet.” 2. “That in order to secure effectually to the public two hundred copies of every such private Bill so requested to be, and declared accordingly to be, a public Act, the said copy fee of one shilling per sheet shall be paid by the party or parties soliciting such private Bill before the third reading thereof; who shall also, before the third reading of such Bill, pay to his Majesty’s printer a sum proportioned to the rate of one pound five shillings for every twenty-five copy sheets that such Bill when printed shall contain; the amount of such copy fee and expense of printing to be refunded to the party or parties soliciting such Bill, if the same shall not pass into a law.” 3. “That a fee of five shillings upon every such private Bill be paid to the clerk of the Journals, to the clerk of the Papers, and the door-keeper attending the private Committees in lieu of the emoluments which they have been used to receive for the same.”²

Lords’ resolutions in 1798.

¹ 41 Lords’ Journ. 265–7.

² *Ib.* 462.

Proceedings
after the
Union,
1801-3.

In the year 1801, the question was again considered, and the Parliament of the United Kingdom presented an address to the King praying that his Majesty would give directions for the more effectual promulgation both of public and private statutes. It was now proposed that 5,500 copies of the public statutes should be distributed at the public charge; the number of local and private statutes to be so printed and distributed was increased from two to three hundred.¹ All these copies were to be delivered by the King's printers as "soon as possible after each Bill had received the Royal assent," in conformity with a list furnished to him for the purpose. Again, in 1803, both Houses agreed to limit their resolutions for the printing and distribution of private Acts "only to Acts of Parliament in which a clause shall be inserted declaring that such Act shall be printed by the printer to the King's most excellent Majesty, and may be given in evidence in all Courts of justice, and before all judges and justices, who shall take judicial notice thereof in like manner as if the same had been declared to be a public Act."²

Free distribu-
tion of
statutes,
public and
private.

According to the plan of distribution adopted in 1803, 3,550 copies of the public statutes were reserved for England and 1,950 for Ireland. Of these copies the two Houses of Parliament received 1,101; officials and State departments, 238; public libraries, 34; Courts of Justice, 179; sheriffs, municipal magistrates, &c., 771; and resident acting justices of the peace, no fewer than 3,177. The 300 copies of each public local and personal statute were to be distributed in England as follows:—Eight sets were to go to the House of Lords and its officials; eleven to the House of Commons and the clerks; one each to the Archbishop of Canterbury, the Lord Chancellor, the Speaker, the Privy Council, three Secretaries of State, the Treasury, the King's Library, Lambeth Library, the British Museum, the College of Arms, the Libraries of the Four Inns of Court in London, the two English Universities, the Law Courts, the twelve Judges, the At-

¹ 43 Lords' Journ. 156-66.

² 44 Ib. 91, 98; 58 Com. Journ. 281-2.

torney-General, the Solicitor-General, the Prerogative Courts of Canterbury and York, the Lord Mayor of London, and to seventy-three clerks for Commissions of the Peace. Scotland took seventy and Ireland ninety-seven copies.

There is now a somewhat less lavish distribution both of public and private statutes, but in principle the system for promulgating them remains much the same as when first sanctioned.¹ Three separate editions of the Public General Acts are printed, viz., folio, quarto and royal octavo; the private Acts are printed in folio only. Recipients can choose any one of the editions. The Acts are sent either separately as soon as they are printed, when they come into immediate operation and may be required for immediate use; or they are reserved by the Queen's printers till the end of the Session, and then are supplied in bound sets. According to the Promulgation list as corrected to December 31, 1882, there were supplied to the Houses of Parliament 803 sets of the folio edition of the Public General Acts (of which the House of Commons took 687), and 300 of the quarto edition, the whole of the latter being taken by the House of Lords; public officers and State departments were supplied with 130 folio copies; public libraries with 20; Courts of justice, &c., 209; sheriffs, municipal magistrates, &c., 724: a total of 1,886 folio sets. Of the quarto edition 1,661 copies were sent to clerks of the peace, resident acting justices, sheriffs and other officials. The private Acts were promulgated more sparingly. The Houses of Parliament received 17 copies; officers and State departments, public libraries, Courts of justice, clerks of the peace and others, 122.

Present system of promulgation.

Editions of statutes.

¹ Report of Departmental Committee of 1883 on Promulgation of Statutes in England [C. 3,648]. See also, as to Scotland and Ireland, Reports of 1884 [C. 4,197] and [C. 4,198]. By the latter a reduction of eighty-seven copies was proposed for distribution in Ireland,

including thirteen copies of local and private Acts. The former report suggested similar reductions, the supply of local and private Acts being restricted to the Court of Session, the Exchequer Chambers and the public libraries.

Promulgation
lists, changes
in.

Besides the copies above specified, others, in varying number, are now supplied to the departments of the Government and to the Colonies, and are included in the promulgation charge.¹ Moreover, as the practice has been to supply a copy to the chief magistrate of every city and municipal borough in England, except London, and to clerks of the magistrates in boroughs which have a Commission of the Peace under the Municipal Corporations Act, additions continue to be made to the list from time to time by direction of the Home Secretary.² There is also what is called an "extra Promulgation list;" a few private Acts and 269 copies of public Acts are paid for by the Stationery Office in addition to those covered by the general charge for the ordinary promulgation copies. The royal octavo edition is thus distributed. A large number of copies (136) are taken by the Colonial Office for distribution in the Colonies: public officers and State departments, besides the share before mentioned, also receive 236 copies of the octavo and folio editions.³

Copies distri-
buted in
colonies.

Quarter Ses-
sions and
Petty Ses-
sional divi-
sions.

The county authorities to whom copies of the statutes are sent usually divide them among the clerks of each petty sessional division. Each chairman of quarter sessions also receives a copy; and some copies are supplied direct from the printers, at the request of Courts of quarter sessions, to the more active among the magistracy.⁴ These appear to be treated as private property, are not returned to the county authorities on the death of the recipients, and have been in some cases continued to be supplied to obsolete boroughs and to the representatives of magistrates long after their decease.⁵ The Committee of 1883 recommended a further revision of the lists, and also suggested, with a view to economy, that, at the first convenient opportunity, the quarto and folio editions of the public statutes should be discontinued.⁶ This was in

¹ Report of Committee on Promul-
gation in England, p. 35.

² *Ib.* p. 31.

³ *Ib.* p. 39.

⁴ The number of Chairmen of
Quarter Sessions in England and

Wales in 1883 was 95; there were
725 Petty Sessional Divisions; and
13,899 magistrates (*Ib.* App. F.
p. 50).

⁵ *Ib.* p. 5.

⁶ *Ib.* p. 9.

conformity with a recommendation made by a Committee of the House of Commons in 1835, that the whole of the statutes issued for promulgation "should be printed of one uniform size, and that the royal octavo size is the most convenient." A Committee of the House of Lords, however, in 1836 refused to adopt this recommendation, and recorded their opinion that public convenience was better consulted by retaining the different sizes than by having one uniform size.¹

Conflicting recommendations by Committees, 1835-6.

In the second Session of 1884, Parliament by joint resolutions adopted the recommendations contained in the report of the Committee appointed by the Lord Lieutenant of Ireland, on the application of the Home Secretary, to consider and revise the list of 1801 for the promulgation of statutes in Ireland; and the comptroller of Her Majesty's stationery office was directed to cause the printing and delivery of copies of the public general statutes, and the public local and private Acts, according to the mode of distribution contained in the report and revised list. Power was also given to the Lord Lieutenant of Ireland, with the sanction of the Treasury, from time to time to vary the distribution authorized by the revised list.²

Promulgation of statutes in Ireland.

Copies of the statutes promulgated by the Queen's printer must be impressions from the same type as that from which the certified copies deposited with the Master of the Rolls and at the Record Office have been printed. Private Acts, from which the vellum copies are prepared, must be carefully examined to see that they contain the amendments made in both Houses, and are lodged at the Private Bill Office by the respective agents, as standard copies for use by the Queen's printers.³

Care to secure accuracy of promulgated Acts.

¹ Lords' Committee on Promulgation of Statutes, 1836; Report.

10, 1884; *ante*, p. 339, note.

² Commons' Minutes, November

³ Bigg's Int. to Standing Orders of 1885, p. 19.

CHAPTER IV.

EARLY PRECEDENTS: PERSONAL: ACTS OF ATTAINDER AND
 RESTITUTION IN BLOOD: DIFFERENCES BETWEEN HOUSES
 AS TO RIGHT OF ORIGINATING SUCH BILLS: ACT DEGRAD-
 ING FROM DUKEDOM: ACTS NOT PRINTED IN STATUTE-
 BOOK: A JUDICIAL MURDER: ESTATE, NATURALIZATION,
 AND DIVORCE ACTS: MISCELLANEOUS.

Unsettled
 character of
 early public
 and private
 legislation.

WE must not look to the reigns of the Plantagenets for examples of settled constitutional practice in private or public legislation. Sometimes, according to the records which have been quoted, the answers to petitions or Bills were given by the King's Council, however this body may have been composed. The assent of the Commons, except to grants of money,¹ was assumed, and was not asked. Parliaments were convened all over the kingdom, and seem often to have been little more than provincial assemblies. The Lords, spiritual and temporal, were summoned, or left unsummoned, at the King's pleasure. Similarly, the numbers of the Commons in Parliament rose or fell as the King or his advisers thought

¹ With the clergy, when money was wanted, Edward I. had a peremptory way. In 1294, the King appealed to the clergy in person for an extraordinary grant towards the expenses of the war with France. He pointed out how liberal the other estates of the realm had been, and how much more might reasonably be demanded from men who were personally exempt from military service, and whose lands were commonly free from its obligations. He ended by asking a grant of half their incomes, in return for which he pro-

mised a redress of grievances. The clergy tried to compromise for a fifth, but their spokesman, the Dean of St. Paul's, died of terror in the royal presence; and Sir John Havering, coming into Convocation, addressed it briefly: "Reverend Sirs, the King demands half your revenues. If any oppose, let him stand up, that he may be marked as an enemy of the King's peace." The clergy quailed and gave way.—2 Pearson's Hist. of England in the Early and Middle Ages, p. 384.

fit.¹ Between public and private Acts no clear distinction was drawn, though there was a form of assent appropriate to each class. Legislation might be by charter, statute or ordinance, and the distinction between the two last, as we have seen, was by no means clear. In revoking (A.D. 1322) the Act of pardon to the pursuers of Hugh Despenser, father and son, the statute repealed, which would now be called a personal Act, is mentioned as a "statute, ordinance, provision and acquittance,"² showing that the terms sometimes conveyed substantially the same meaning. It was the dawn of private as of public legislation, and in the examples which will now be given, it is seldom possible to trace the line of separation between general and particular measures, or to vouch that due constitutional forms were observed before they found places in the statute-book.

Personal Acts are the most frequently met with. One of the earliest is a unique example of a public statute, not only founded upon a private suit, but expressly dealing both with the public and the private issue. It is the well-known

Butler's case:
Stat. of
Waste,
A.D. 1291-2.

¹ Out of about sixty assemblies, loosely called Parliaments, during the thirty-five years' reign of Edward I., not thirty can be identified as Parliaments proper. Once (Jan. 20, 1283), the nobles being with the king in Wales, the clergy and commons of all England, except perhaps the counties palatine of Durham and Chester, were assembled in two distinct conferences; the counties north of Trent meeting at York, and those south at Northampton. In 1360, knights and burgesses were summoned to attend at five different places—Westminster, Worcester, Taunton, Lincoln, and Leicester. Above all, the Crown exercised a wide discretion in issuing writs of summons. At the Parliament of Salisbury (A.D. 1297) the bishops and abbots were not summoned. It summoned 43 earls and

barons to the Parliament of Bury St. Edmunds in 1296, and 118 to the Parliament of Lincoln in 1301. It varied the number of cities and boroughs that returned representatives, from 21 in 1283 to 94 in 1295. With so vast a power of packing the representative assembly, and no restrictions but the want of money, or the dread of popular opinion, the Crown might well regard its Parliaments without any excessive jealousy. But it had another and grosser method of influencing votes. Knights of shire and burgesses were allowed their expenses in Parliament, by an arbitrary table of fees; and the Crown took upon itself to diminish or withhold the payments made, according to its own estimate of the members' respectability and good behaviour.—Ib. 457-9.

² 15 Edw. II.; 1 Stat. of Realm, 185.

Statute of Waste,¹ the preamble of which begins abruptly in this wise:—

“ William Butler (Botiler), who is under age and in ward of our Lord the King, hath showed unto his Highness that, whereas Gawin Butler, his brother, whose heir he is, lately impleaded one Walter de Hopton by the King’s writ for waste and destruction made by him, the said Walter, in certain lands and tenements which the same Walter held for life, of the inheritance of the aforesaid Gawin in Wimme and Thirke; and the foresaid Gawin, before he had obtained judgment, died; after whose death the foresaid William by like writ impleaded the foresaid Walter for the waste and destruction made by him of long time; the same Walter, before Gilbert Thornton and his companions assigned to hear the King’s pleas, came in and said that he ought not to answer to the same William for waste and destruction made in the time of another, before the right of the inheritance descended unto him, and thereupon demanded judgment:

The judges
differ in
opinion.

“ And forasmuch as certain justices did not agree in giving of the said judgment, because it seemed to some that it should not be conformable with law if, by the aforesaid writ, which is a writ of trespass done to a person certain, any person should obtain advantage and recompense except the person to whom and in whose time the trespass was done; other justices, with the more part of the King’s Council, were in the contrary opinion, alleging by divers reasons that the said William ought to be heard and answered unto, and all others, whosoever they be, in like cases, or otherwise like trespasses would for ever remain unamended, and trespassers unpunished, which would be hard and inconvenient for heirs to whom such trespass should be done.”

Heirs may
bring action
for waste done
before their
inheritance.

After this lengthy recital, it is said, “therfor the King, in his full Parliament, by his common council hath ordained (de communi consilio statuit), and from henceforth hath commanded straitly to be observed;” and a general enactment follows that all heirs may have an action by writ of waste done in the time of their ancestors. There are general provisions to this effect, and then the statute comes back to the particular case:—“And it is commanded by the King

¹ 20 Edward I. (A.D. 1291-2).
The original is in Latin; the version

in the text is taken, with slight alterations, from 1 Stat. of Realm, 109.

himself¹ unto the same Gilbert Thornton and his companions that they do proceed in the foresaid matter, and in other like, from henceforth; and judgment shall be given according as the matter is found. And likewise it is commanded unto the justices² that they shall cause all the foresaid things to be straitly observed before them from henceforth."

In the year 1311, certain "new ordinances" were made at London by the Archbishop of Canterbury (Robert Winchelsey), seven bishops and thirteen earls and barons, chosen by the House of Lords, with the assent of the weak King Edward II., "to order the state of our household, and of our realm, in such manner that their ordinances should be made to the honour of God, and the honour and profit of Holy Church, and to our honour, and to our profit, and to the profit of our people, according to right and reason, and the oath which we made at our coronation."³

Edward II. had deeply offended the barons through his favourites Piers de Gaveston and the Despensers. One of the principal ordinances, therefore, banishes Gaveston, and resumes the King's grants to him. It opens with this recital—"Forasmuch as by bad and deceitful counsel our Lord the King and all his subjects are dishonoured in all lands; and moreover the Crown hath been in many points abased and dismembered, and his territories of Gascony, Ireland and Scotland on the point of being lost, if God do not give amendment, and the realm of England on the point of rising through oppressions, prises⁴ and destructions (en point de reveler par oppressions, prises et destruccions)."

Ordinances of
1311.

Piers de
Gaveston
banished.

¹ In conformity with the recital that the justices were "assigned to hear the King's pleas."

² Interlined here on the roll are the words—"de banco in pleno Parlamento."

³ These ordinances which, though not in proper statutory form, had the force of law, are printed in 1 Stat. of Realm, 157 *et seq.* The originals

are in Norman-French.

⁴ Levies in money or kind by the King's officers or household, under pretext of making purveyance of provisions or goods for the King's use. Ordinance 10 provided that all prises should cease, except ancient and customary ones; and if there was any unauthorized taking of corn, merchandize or goods, without

Another part of the preamble declares that the appointment of these Commissioners has been by free grant of the King "to the prelates, earls and barons, and to the other good people of his realm." The operative part of these ordinances begins—"First, it is ordained that Holy Church have all her franchises, in such sort as she ought to have." After various other general provisions, there is a recital that "the King hath been evil guided and counselled by bad counsellors." All evil counsellors, therefore, are to be "put away and removed altogether, so that neither they nor other such be near him, nor retained in any office of the King, and other more fit people be put in their places." Next comes a remarkable provision that, "as many evils have come to pass by such counsellors and such ministers, we do ordain that the King do make the Chancellor, Chief Justice of the one bench and the other, the Treasurer, the Chancellor and Chief Baron of the Exchequer, the steward of his household, the keeper of his wardrobe, and comptroller, and a fit clerk to keep the Privy Seal, a chief keeper of the forests on this side of Trent, and also an escheator on this side of Trent, and another on the other side of Trent, and the chief clerk of the King in the common bench, by the counsel and assent of his baronage, and that in Parliament; and if it happen by any chance that it be expedient to appoint any of the said ministers before there be a Parliament, then the King shall appoint thereto by the good counsel which he shall have near him, until the Parliament."

High officers
to be ap-
pointed by
advice of
Lords in
Parliament.

Charges
against Piers
de Gaveston.

In a long preamble it is declared to be "a matter known, and proved by the examination of the prelates, earls and barons, knights and other good people of the realm, that Piers de Gaveston hath evil led and evil counselled our Lord the King, and hath enticed him to do evil in divers deceitful

paying full value, "the pursuit of the hue and cry shall be raised upon" the offender, "and he shall be carried to the next gaol of the King, and

the common law shall be done of him as of a thief or robber" ("de lui soit fait comme lei come de robeour ou de larron").

ways, by gathering to himself all the King's treasure and sending the same out of the realm; by laying claim to royal power and dignity, as in making alliances with people by oaths to live and die with him against all men, and that by the treasure he acquired from day to day; by lording it over the King and Crown, to the destruction of both King and people, and the estrangement of the King's heart from his liege subjects; despising their counsels; not suffering good ministers to execute the law of the land; removing good ministers; putting in his own creatures (*ceux de sa covine*), both aliens and others, who at his will and by his command offended against right and the law of the land."

As if this indictment were not weighty enough, he is charged with accepting large grants of land, "maintaining robbers, homicides, and enabling them to obtain the King's charter of his peace, thus encouraging evil-doers to act worse;"¹ carrying the King into hostile land without the assent of his baronage, to the peril of his person and the destruction of his realm; causing to be sealed blank charters under the great seal of the King, in deceit and disheritance of the King and his Crown." Then is set forth that Edward I. willed his son to abjure for ever the company of Piers de Gaveston;² and further that, "by common consent of all the realm, and of the King, and of the prelates, earls and barons, it was awarded that he should leave the realm;" that "his return was never by common consent, but only upon the

Maintenance
of robbers,
and other
alleged
crimes.

¹ Edward I. had sternly repressed the private wars and brigandage of his time, with only partial success. Towards the end of his reign, the country was infested with numerous bands of swash-bucklers, or "trail-bâtons" as they were called, who were protected by the country gentry in consideration of their services in making forcible entries or avenging private feuds, while they maintained themselves by every species of plunder. — 2 Pearson's

Hist. pp. 277, 350.

² It is related that Edward I., when asked by his son to make Piers Gaveston an earl, was so exasperated by this request of high honours for an unworthy object that he fell upon the young prince, tore out handfuls of his hair, and thrust him out of the room; conduct, if this story be true, not consistent with the character for calmness and moderation generally assigned to "the English Justinian."

Sentence of
exile pro-
nounced.

assent of some persons, upon condition that he should well demean himself after his return." Therefore, as now for certain is there proof of his evil demeanour, and for the great evils set forth, "and many others which may happen to the King and his people, and for nourishing good concord between the King and his people, and to eschew many kinds of discords and perils," the Commissioners ordain "that Piers de Gaveston, as the open enemy of the King and of his people, be for ever exiled, as well out of the realm of England, Scotland, Ireland, and Wales, as from all the dominions of our Lord the King, both beyond the sea and on this side, for ever, never to return." He is allowed liberty till the feast of All Saints. Then "we give him port at Dover, and nowhere else, from whence to pass and go out."¹ If found within the realm after this date, "it shall be done of him as of the enemy of the King and of the realm, and of his people."²

Like ordi-
nances
against Sir
H. de Beau-
mont and
others.

There are other ordinances to the same effect against Sir Henry de Beaumont and other persons,³ some of whom are banished; while Sir Henry, whose offence is that he also has given evil counsel to the King, and taken as gifts, contrary to law, the realm of Man and other lands, is sentenced to be "put out of the King's Council for ever, and that he do never, in any place, come near the King, unless it be at the common summons of the Parliament, or in war if the King willeth to have him." Also all his lands are to pass into the King's hands, and holden until his Majesty has received from

¹ In order, probably, to have better control over persons passing between England and the Continent, Dover was prescribed, by general statute, as the sole point of arrival and departure on the south-eastern coast. No persons were to come from Calais without command, and none were to take passage in the county of Kent for parts beyond the seas, except at Dover (4 Edw. IV. c. 10). For the same reason, pil-

grims were to pass out of the realm only at that port (9 Edw. III. st. 2, c. 8). In those days the Crown did not encourage foreign travel. Great men were not to quit the realm without royal licence (5 Richd. II. st. 1, c. 2, s. 2; 4 Jac. I. c. 1, s. 22), which even prescribed what silver vessels they might take with them beyond the seas (17 Edw. III. c. 2).

² Ordinance, 5 Edw. II. c. 20.

³ 5 Edw. II. c. 21, 22.

the rents of, the same the value of all that has come to Sir Henry from lands which he has taken as gifts. His sister, Lady de Vesci, for procuring the King to give him these lands, and also for procuring to be sent out letters under the Privy Seal against the law and intent of the King, is to go to her house, by a specified day, without ever returning to the Court to make stay. "And because it is understood that the castle of Bamburgh belongeth to the Crown," it is to be taken from her into the King's hand, and not delivered to her nor to any other except at the King's pleasure.¹

In spite of these ordinances, the King recalled Gaveston,² re-granting him his estates, and in 15th Edward II. an Act passed for repealing the ordinances. This statute is of constitutional importance because it affirms the authority of Parliament. After reciting the King's Commission, on authority of which the ordinances had passed, and further reciting that by reason of such ordinances and provisions, made by subjects against the royal power of the King's ancestors, troubles and wars had happened in the realm, the Act proceeds:—"It is accorded and established by our Lord the King, and by the prelates, earls and barons, and the whole commonalty of the realm, at this Parliament assembled, that all the things by the said ordainors ordained and contained in the said ordinances shall from henceforth for the time to come cease and shall lose their name, force, virtue and effect for ever; the statutes and establishments duly made by our Lord the King and his ancestors, before the said ordinances, abiding in their force: And that for ever hereafter, all manner of ordinances or provisions, made by the subjects of

Repeal of
ordinances,
15 Edw. II.

¹ Edward II. had invaded Scotland in 1310, and was helped with some foreign mercenaries by Gaveston, who in the following year was left with a garrison in Bamborough Castle.

² In 1312 Gaveston was besieged by the barons in Scarborough

Castle, where he had been placed by the King. He surrendered on a promise that his life should be spared, but was executed a month afterwards on Blacklow Hill, near Warwick, in the presence of the Earl of Lancaster and other barons.

Authority of
Parliament
affirmed.

our Lord the King or of his heirs, by any power or authority whatsoever, concerning the royal power of our Lord the King or of his heirs, or against the estate of our said Lord the King or of his heirs, or against the estate of the Crown, shall be void and of no avail or force whatever; but the matters which are to be established for the estate of our Lord the King and of his heirs, and for the estate of the realm and of the people, shall be treated, accorded and established in Parliament, by our Lord the King, and by the assent of the prelates, earls and barons, and the commonalty of the realm; according as it hath been heretofore accustomed.”¹

The Despen-
sers exiled,
A.D. 1321.

About the same time, in 1321, we find the traitorous deeds of Hugh Despenser, father and son, set forth in great detail, and their exile ordered, but without the concurrence of the Commons, the operative part of the ordinance being—“We, peers of the land, earls and barons, in the presence of our Lord the King, do award” that Sir Hugh le Despenser, father and son, “be disherited for ever, as disheritors of the Crown and enemies of the King and his people; and that they be utterly exiled out of the realm of England, without returning at any time unless it be by the assent of our Lord the King, and by the assent of the prelates, earls and barons, and that in Parliament duly summoned. And we do give them port at Dover, and none other place elsewhere, to void and pass out of the realm.” If they go not by the day specified, or if they return, “then be it done unto them as enemies of the King and of the kingdom (*adonques soit fait d’eux come des ennemis du roi et du roialme*).”

Their exile
revoked.

This award of exile, as it was called, was solemnly revoked in a Parliament of 1322; and on the roll the statute ordering it is defaced with cross lines, and has the following memorandum subjoined:—“*Le dit acord e estatut est aneanti et chancele par force de un estatut qui se fit au Parlement le roi a York . . . le quel estatut est desuth escrit.*” A statute

¹ 15 Edw. II. (A.D. 1322); 1 Stat. of Realm, 189.

was also passed¹ revoking the pardon which had been granted to the pursuers of the Despensers. The repealing statute recites that "it was showed by the prelates, earls, barons, knights of shires and the commonalty," assembled at York by the King's command, "that the said statute, ordinance, provision and acquittance were sinfully and wrongfully made and granted, against reason and common right, and against the oath of our Lord the King which he made at his coronation; and that the assent which they gave to the said statute, &c., was given for dread of the great force which the Earl of Hereford and the other great confederates suddenly brought to the Parliament of Westminster, with horse and arms, in affray and abasement of all the people; and that they would not in anywise have assented to the said statute, &c., but by reason of the said outrageous and unjust force; wherefore they there besought our Lord the King that, for the salvation of his soul and of their souls, he would cause to be brought before him, in the said Parliament, summoned and holden at York, the tenor of the said statute, &c., and would cause them to be examined, repealed and wholly made void."

Pardon to
pursuers of
the Despen-
sers also
revoked.

Then the text of the statute in favour of the pursuers is set forth; and being "rehearsed and examined in presence of the prelates, earls, barons, knights of shires, and the commonalty of the realm," it is found to be "against reason and common right, and against the King's oath made at his coronation, and against the tenor of the great charter of the liberties of England, which is confirmed by sentence of excommunication, and wherein it is contained that the King shall not deny or delay unto any man right or justice; and that the said acquittance was made more for the emboldening and favouring of malefactors and disturbers of the peace to commit felonies, trespasses and crimes than for remedy and redress of wrong."

The two Despensers and their adherents, it is further

The confederates left

¹ 15 Edw. II.; 1 Stat. of Realm, 185.

subject to the
law.

recited, could not make suit for recovery against the Earl of Hereford and the other confederates if the said statute, ordinance, provision and acquittance of felonies and trespasses should not be repealed and annulled. Therefore the King "for the causes aforesaid, and for the taking away the bad example of such evils in time to come, in his full Parliament at York, of his royal power, with the advice and assent of the prelates, earls, barons, knights of shires, and the commonalty of the realm, there assembled by his command," repeals and annuls for ever the said statute, &c., "as a thing done against reason, law and the custom of his realm, and in prejudice of him and his Crown, and of his royal dignity." And every man is to have his action, suit, and as much as the law giveth him, notwithstanding the statute repealed, so that by it "no man shall be protected, aided or defended in any point."

Act notified
to judges by
Edw. II.

It will be seen that the Act, which is in Norman-French, amounted to no more than the repeal of a statute of personal indemnity, leaving the law to take its course. It is followed, as part of the inrolment, by letters patent from the King to his Justices of the Bench and Pleas, and the Treasurer and Barons of the Exchequer, setting forth that in the Parliament of Westminster, by a statute, &c., made to prevent the prosecution of Humphry de Bohun, then Earl of Hereford and Essex, and other great men of our realm, "the suit of other men was by us improvidently remitted, and other manifold errors intervened;" and also setting forth the repeal of this statute in the Parliament at York:—"The same revocation and annulment we have thought good to transmit to you under our seal, commanding that the same before you in the Bench aforesaid, you do cause to be read, published, and in the rolls of the said Bench to be inrolled; and the aforesaid statute, ordinance, provision, and acquittance, which we lately sent unto you under our seal to be published and inrolled in the Bench aforesaid, you do cause to be cancelled and annulled."

That "false traitor, John Cade, naming himself John Mortimer, Captain of Kent," is in 1450 the subject of an Act of attainder, which recites that on July 9, 1449, at Southwark, Dartford, and Rochester, he "falsely and traitorously imagined the King's death, destruction and the subversion of this realm in gathering and levying a great number of the King's people, and them exciting to make insurrection against the King . . . And though he be dead and out of mischief (mort et mescheve), yet by law of the land not punished. . . . to put such traitors in fear in time coming, and for saving of himself and his realm, the King, by advice of his Lords spiritual and temporal in Parliament assembled, and at the request of his Commons, hath ordained by authority of Parliament that Cade shall be of these treasons attainted; and that by the same authority he shall forfeit to the King all his goods, lands and tenements, rents and possessions . . . and his blood corrupt and disabled for ever, and to be called a false traitor within this realm for ever."¹ The Act of attainder against Cade follows closely the petition of the Commons on which it is founded.² The latter begins—"Prayen youre Commons of this present Parliament," and asks the King to ordain. This prayer has been omitted, and proper words of enactment are inserted. Otherwise, the language and sequence of the petition are preserved.

Cade's
rebellion.

¹ 29 Hen. VI. c. 1. Cade, a soldier of fortune, who had seen service in Ireland, and claimed royal descent, was "a young man of goodly stature and pregnant wit," and styled himself "Captain of the great assembly of Kent." He sent to the council from his camp at Blackheath a demand for the dismissal of evil councillors and the redress of what appear to have been well-founded grievances. The pardons offered to him and his followers in the King's name by the chancellor (Archbishop Kempe) and the Bishop of Winchester (Wayneffete), at their meeting in St. Saviour's Church,

Southwark, are entered on the patent roll of Henry VI., and show either a wide-spread sympathy with the rising, or that persons of good position in Kent, Surrey and Sussex must have been forced to join the insurgents. In Kent alone, one knight (Sir John Cheyne, of Eastchurch, in Sheppy), eighteen esquires and seventy-four gentlemen were pardoned, together with the bailiff of Folkestone, the mayor of Queenborough, and the whole communities of Canterbury, Rochester, Chatham, Maidstone and Sandwich.—*Annals of England*, 239.

² 5 Rot. Parl. 224.

Lord Audley. In 1503—4, a general Bill of attainder was passed against many persons engaged in rebellion against Henry VII.¹ Lord Audley and the simple West-country gentlemen and yeomen concerned with him were first dealt with. They, in June 1496, traitorously raised and led a great multitude to "a place called the Blackheath," in the parish of Greenwich, "when, by the favour and sufferance of Almighty God, with the King's host royal, to his great and sumptuous charges, they were recoutered, vanquished, dispersed, overcome and divers put to death."² In the bundle of Acts in the Parliament office for this year (19th Henry VII.), that for the attainder of Lord Audley and others is accompanied by the following letter from the King to the Speaker of the House of Commons (Sir Edward Dudley), directing the erasure of the name of Robert Symson from the Act :—

Erasure of
name by
King's order.

"H. R." [the King's signature.] "By the King. Trusty and well-beloved, we grete you well. And where as a Bill of attaynder cam lately unto you to pass by the assent of this present Parliament, in the which Bill oon Robert Symson, of our citie of London, gentilman, is recited amongst other rebellys to passe in the said attayndre ; We for certain causes us moving wol and comand you to doo the name of the said Robert Symson, by whatsoever name or names he be called, to be rased and strocken owte of the said Bill ; and these our letters shall be your sufficient warrant in that behalve. Yeven under our signet at our palais of Westminster the xxviiiith day of Marche."

The requisite erasure appears accordingly in the Act.³

Perkin
Warbeck.

Next on the list come a number of gentlemen and yeomen of Cornwall and Devon, who supported Perkin (called Piers) Warbeck,⁴ when he landed at Whitsand Bay in September,

¹ 19 Hen. VII.

² They had risen against the collection of a subsidy for the war in Scotland. One of the persons executed for his share in this rising was Flammoch, a lawyer, who told the people that the barons of the north were bound by the tenure of their

estates to defend the realm against the Scots at their sole expense. Lord Audley was beheaded on Tower Hill, his coat of arms being reversed and torn ; the others were hanged at Tyburn.—*Annals*, 276.

³ *Int. Stat. of Realm*, 71.

⁴ Calling himself Richard, Duke

1497. Following these are the Earl of Warwick, and several citizens of London, who, notwithstanding Warbeck's "false and cursed purpose," tried to rescue him from the Tower and make him King.¹ Then come certain northern adherents of the Earl of Lincoln; Edmund de la Pole,² Earl of Suffolk, with many Suffolk gentlemen and others; and all of them are declared to be attainted of high treason and their estates forfeited, but there is a saving as to estates which they held in right of their wives, or in trust; and as to the rest, existing mortgages are to attach to the forfeited lands as though the Act of attainder never had been. There are other provisions that the Act is not to extend or be in any wise hurtful or prejudicial to Thomas Earl of Arundel or to Sir Richard Guildford, of Berks.

Lord
Warwick.

Earls of
Lincoln and
Suffolk.

This melancholy chapter of proscriptions and of forfeiture is varied by a petition to Henry VII. from "Margaret Countess of Richmond and Derby, your most loving and lowly mother," who sets forth the sale to Cardinal Beaufort by Henry VI. for "a great and notable sum of money" of divers lordships and manors; that these should have come to her as the Cardinal's cousin and heir; whereas Alice Countess of Salisbury, by the great help and favour of Edward IV.,

Act of Resti-
tution to
mother of
Hen. VII.

of York, son of Edward IV. He was hanged and quartered at Tyburn, 1499. There is much evidence to negative that he was an impostor (see facts collected in *Annals*, 279-80, where stress is laid on his reception at the Scotch Court, and his treatment as a prisoner of rank by Henry VII. himself).

¹ On Henry's accession in 1485, the young Earl of Warwick, one of the sons of the Duke of Clarence, was confined in the Tower, as a possible candidate for the throne. He was indicted, upon scant evidence, and executed, upon the charge mentioned in the text; but was probably

sacrificed for reasons of State, as the projected marriage of Henry's son, Arthur, with Katherine of Arragon, daughter of Ferdinand and Isabella, was declined by Ferdinand so long as "one doubtful drop of royal blood" remained in England.

² When Henry was rid of the Earl of Warwick, De la Pole became head of the Yorkist party, and with his brother, the Earl of Lincoln, were next marked out for destruction. De la Pole, who had fled to Germany, was given up to Henry, for 10,000*l.*, by the son of the Emperor Maximilian, and shared the fate of Warwick.

and her son Richard, late Earl of Warwick, "against all right and conscience, without any ground or title, laboured an Act of Parliament to be made in the said Edward IV., by force of which she entered on these lordships and manors." In compliance with this petition, and adopting its terms, Parliament enacts, as may be supposed, that the Countess of Richmond shall not be prejudiced by the recited Act of Edward IV., and the lordships and manors in dispute are assured to her and her heirs.¹

John, Duke
of Norfolk:
Attainder
reversed.

A much longer and more elaborate statute² reverses an Act of attainder against John, late Duke of Norfolk, and Thomas, Earl of Surrey, and restores to the Earl of Surrey all his rights, honours, castles and manors. Viscount Wells and Cecil his wife, Lord de la Warre, Edmond Lord Roos, with some others, are also objects of royal favour, in statutes of the period; but as Edmond, Lord Roos, "is not of sufficient discretion to guide himself and his livelihood nor able to serve his Highness after his duty," the King and Parliament give his governance, and that of his castles, and all other possessions, into the hands of Sir Thomas Lovell, knight, who is to enter upon the same at Edmond's death, paying to the King a yearly rent of 700 marks. Upon Sir Thomas Lovell's death, the King is to succeed. To the next in kin to Edmond, "Richard Roos, squire," there is reserved a pittance of a life-rent of 40*l.*; there are also some savings on behalf of other persons.³

Edmond,
Lord Roos.

Other statutes in this reign bear still greater testimony to the King's rapacity, and Parliament meekly registered his decrees. One, passed in 1495, an *ex post facto* law of gross injustice, recites that divers leases had been made in the Principality, in the counties of Chester and Flint, Hereford and Salop, of castles and lands granted to the Prince of Wales by the King, such leases having been made for life or lives or for terms of years, but "much less rent" being re-

Leases in
Wales.

¹ 7 Hen. VII. c. 15.

² 4 Hen. VII. c. 20.

³ 7 Hen. VII. c. 16.

served unto the King and Prince than these lordships, castles and lands "might reasonably be set for." By authority of Parliament it is therefore declared "that all such leases from the feast of St. Michael the Archangel next coming be utterly void and of none effect."¹ All grants of offices made within the Principality, the Duchy of Cornwall, and other places are also declared void, with preference of renewal to the present holders; an obvious means of replenishing the King's exchequer. As wholesale confiscation, however, might be carried too far, there are nearly thirty saving clauses in favour of men of high and low estate, from the Marquis Dorset, W. G. Ap-Robyn, sheriff of Carnarvon, and John Fowler, constable of Ludlow Castle, down to John Edwards, bailiff of Bewdley, and T. Colbrond and Ralph Bryne, porters of Beeston Castle, Cheshire, and of Rutland Castle, Flintshire. Page after page of the statute-book during this reign records Henry's cruelty and greed, and the base connivance of Parliament.

Saving
clauses.

A good example of the mixed form of private legislation, partly petition partly enactment, was passed in 1553.² It is the Act for reversing and making void the Act of attainder affecting the Duke of Norfolk and the Earl of Surrey, passed when Henry VIII. was on his death-bed.³ The statute begins as follows:—"In most humble wise sheweth unto your Highness your humble and obedient subject and suppliant, Thomas Duke of Norfolk." Then follows a recital of the tenor of the Bill of attainder "exhibited" unto the Parliament of Henry VIII., and an allegation that the "Bill so exhibited was assented unto by the Lords and Commons of the same Parliament;" that, forasmuch as the late King was "then in such extremity of sickness and peril of death that he could not personally be in the Parliament chamber as is accustomed, a Commission was directed in his name." By

Reversal of
attainder:
Duke of
Norfolk and
Lord Surrey

¹ 11 Hen. VII. c. 34.

² 1 Mary, sess. 2, c. 13. It is not printed at length in any edition of the statutes, but is given in the

volumes published in 1811 under the direction of the Record Commission. (Int. to Stat. of Realm, 75, 76.)

³ *Ante*, p. 314.

Recitals that
Bill of at-
tainer is
void through
informality
in Royal
assent.

virtue of this Commission, and at the commandment of the Commissioners, in the absence of the King, there was entered in the head of the Bill these words following, viz., "Soit fait comme il est désiré." "And forasmuch, most gracious Sovereign Lady, as the offence wherewith your said suppliant and subject was charged and whereof he was indited was for bearing of arms which he and his ancestors heretofore of long time and continuance had borne, as well within this realme as without, and as well also in the presence of the said late King as in the presence of divers of his progenitors; And forasmuch also as the said late King departed from this transient world in the night next following after that the said Commission doth bear date; and the Commission was not signed by the King's hand, as the statute required;" so that "the Bill remaineth in very deed as no Act of Parliament, but as a Bill only exhibited in the said Parliament, and only assented unto by the said Lords and Commons and not by the late King." Nevertheless, as the same "may be taken for a good and perfect Act, whereby your said suppliant and his posterity may be hereafter in some peril to be disinherited and shall be the less able to serve your Highness and this realm, if some convenient remedy for the same" be not had. Then follows the operative part of the Act, but expressed in the words of the petitioner or promoter, as he would now be called:—

Bill declared
of no effect.

"For the true and perfect declaration thereof may it please your Highness that it be declared by the authority of this present Parliament, That the law of this realm is and always hath been that the Royal assent and consent of the King or Kings of this realm to any Act of Parliament ought to be given in his own royal presence, being personally present in the higher House of the Parliament, or by his letters patent under his Great Seal, assigned with his hand, and declared and notified in his absence to the Lords spiritual and temporal and Commons together assembled in the higher House, according to the statute made in the 33rd year of the reign of the said late King Henry VIII. in that case ordained and provided; and that the said pretended Act whereby it is sup-

posed your said suppliant is attainted, is by the common laws of this your realm void and of none effect, and by the authority abovesaid shall be taken, adjudged and deemed to be no Act of Parliament, and that it never took any effect as an Act of Parliament," &c.

Then there are provisos and sections that the Act shall not affect any grants made of the Duke of Norfolk's lands by Edward VI.; that any exemplification under the Great Seal of the tenor of the pretended Act shall be void "and shall not be pleadable or answerable in any Court or Courts of your Highness, your heirs or successors, or elsewhere;" that the Duke of Norfolk may re-enter into possession of lands accordingly, with saving of rents, customs and services; and a proviso that the Duke shall not have the mean profits.

A Bill of pardon used to begin neither with the Lords nor Commons, but was first signed by the Crown and sent to both Houses, in each of which it had only one reading.¹ It then again received the Royal assent, and D'Ewes in his Journal says that, at the close of the Session of 1580, on reading the Royal assent to the Pardon Bill, the Queen was thanked in these words:—"Les prelates, seigneurs et communes, en ce present Parlement assemblez, remercient tres humblement votre Majestie, et prient a Dieu qu' Il vous donne santé bonne et vie longue."² Again, in Bills affecting the rank and titles of the peers, as in those for reversing attainders or outlawries, and for restitution in blood, the Crown, as the fountain of honour, being most materially interested, its consent is still signified before any proceeding is begun.³ Thus, Bill reversing

Saving
clauses.

Bills of
pardon and
restitution in
blood.

¹ 3 Hatsell, 64.

² There is no trace of these words in the Lords' Journals.

³ 2 Hatsell, 337—339, note. For restitution in blood a legislative measure was always essential. Attainder involved a legal corruption of blood which, unless removed by Parliament, for ever prevented the offender from inheriting; his lands

also were escheated to the lord of the fee, or forfeited to the Crown. By his treason or felony, according to the theory of the ancient law, the original gift of the feud was determined, for it was always granted to the vassal on an implied condition that it should be held only *dum bene se gesserit*. Upon the demonstration of his guilt, by legal attainder, the

Lord William
Russell's
attainder.

Algernon
Sidney.

Right of
Lords first
to consider
Restitution
Bills.

Sir H. Bond's
attainder
reversed,
1707.

the Bill to reverse the attainder of Lord William Russell came to the House of Lords in March, 1688, as a private Bill, with the King's name in the margin :—"William R. I do allow of the bringing in of this Bill." There was the same procedure on the reversal of Algernon Sidney's attainder.

Some differences have at times prevailed between the two Houses as to the right of originating Bills of this nature. In 1606 the Lords asserted their right, and James I. admonished the House of Commons in their favour. A Committee was appointed by the Lords in 1695, to search for precedents of Bills for reversing judgments, which Bills had begun in the Commons; and in 1702 the Lords resolved :—"That this House will, in no future times, ever receive any Bill for reversing outlawries or restitution in blood, that shall not first be signed by her Majesty, or her successors, Kings or Queens of this realm; and sent by her or them to this House, first to be considered here." Two Bills of this class had recently been begun in the Commons "contrary," as the Lords' Journal says, "to the usage of Parliament and her Majesty's prerogative royal." But the practice does not seem to have been settled till much later, for in 1707 a Bill was brought from the Commons to the Lords "for reversing the attainder of Sir Henry Bond," and the Lords were acquainted "that her Majesty had given her consent to this Bill." They, however, ordered it to "lie on the table;" and afterwards a Bill to the same purport, signed by her Majesty, was brought into

feudal covenant and natural bond of fealty were held to be broken, the estate instantly reverted to the lord of the fee, and the offender was not only himself incapable of inheriting and of transmitting his own property by heirship, but would also obstruct the descent of lands or tenements to his posterity in all cases where they were obliged to derive their title through him from any remoter ancestor. The King might excuse the public punishment of an offender,

but could not abolish the private rights which had accrued, or might accrue, to individuals as a consequence of the criminal's attainder. He might remit a forfeiture, in which the interest of the Crown alone is concerned; but the authority of Parliament alone could wipe away the corruption of blood, for therein a third person had an interest, the lord who claimed by escheat. Stephen's Com. on Blackstone, c. 12: "Title by Escheat."

the upper House by the Earl of Sunderland, and having passed the Lords was agreed to by the lower House, who in this instance waived their claim.¹

An Act passed in 1483—4, during the short-lived authority of Richard III., and the last of his reign, provides “for certain great causes and considerations, touching as well the surety of the most royal person of the King our Sovereign Lord Richard III. as of this his realm,” that all letters patent, &c., granting castles, lordships, manors, lands, &c., made at any time to “Elizabeth, late the wife of Sir John Grey, knight, and late calling herself Queen of England,” be annulled.²

Annulling grants to widow of Edward IV.

How considerable a portion of the time of successive Parliaments has been occupied in redressing the wrongs done by their predecessors may be gathered from the following list of 136 Acts passed, from the reign of Henry VIII. to the present period, to restore members of noble and gentle families to honours and lands, or in blood. The titles of some of these private Acts³ recall many painful and discreditable incidents in English history:—

Restitution Acts, 1509-1884.

(1 Hen. VIII.) For the restitution of Robert Ratcliffe, knight, Lord Fitzwalter. (3 Hen. VIII.) Restitution of James Touchett, Lord Awdeley, and John Touchett, his eldest

Henry VIII.:—

¹ 2 Hatsell, 338; and see among other cases there quoted the proceedings, in 1715, on the Bill “for settling the precedency of the Marquis of Lindsey, Great Chamberlain of England, then created a Duke;” and the application to the House of Lords from Lord Digby, in 1716, for a Bill “to debar his eldest son from succeeding to his honours,” when the Lord President signified his Majesty’s consent “that the House might determine therein as shall be thought just.”

² 1 Rich. III. c. 15. Edward IV. was married to Elizabeth, the widow of a Lancastrian noble killed at the battle of St. Albans, in 1461. She was

the daughter of Richard Woodville, Lord Rivers, by Jacquetta, formerly Duchess of Bedford. Edward’s favour for the Woodvilles did much to alienate his nobles. Richard III. alleged that Edward’s marriage was invalid through a pre-contract; hence the description of Elizabeth, assented to by Parliament. Her daughter, Elizabeth, married Henry VII. The ex-queen died in a nunnery at Bermondsey.

³ Few of the Acts here mentioned have been printed. The titles of the earlier cases are taken from precedents collected on this subject by a Lords’ Committee, in 1824, and recorded in 56 Lords’ Journ. 286 *et seq.*

Lord Fitz-
walter, Lord
Dudley, Earl
of Devon, and
others.

son; of John Dudley, son of Edmond Dudley; of Thomas Herte; and of Elizabeth Martin. (4 Hen. VIII.) For restitution of Henry Courtney, Earl of Devon; of Thomas Windham, son of Sir John Windham; of Thomas Empson, son of Sir Richard Empson; of William Baskervill. (5 Hen. VIII.) Restitution for Margaret Pole, late wife of Sir Richard Pole, and sister and heir of Edward, late Earl of Warwick and Salisbury; for Humphrey Stafford; for John Awdley, second son of Lord Awdley. (6 Hen. VIII.) Restitution for Sir Edward Belknop, and for John White, clerk. (14 & 15 Hen. VIII.) Restitution for Henry Stafford, son of Edward Stafford, Duke of Buckingham. (31 Hen. VIII.) Restitution for Henry Norries. (34 & 35 Hen. VIII.) Restitution in name and blood of Walter Hungerford and Edward Nevill.

Edward
VI.:—
Lord Stafford,
Mary Sey-
mour, Sir
Edward Sey-
mour, and
others.

(1 Edw. VI.) Restitution in blood of Lord Stafford; of John Lumbey, Esq.; and Griffith Rice, gentleman. (2 & 3 Edw. VI.) Restitution in blood of Sir George Darey; of Francis Carew; of Edward Charleton; of Sir George Bulmer; of Henry Weston; of Ralph Bigot; and Thomas Percy, son of Thomas Percy, knight. (3 & 4 Edw. VI.) Restitution in blood of Sir William Sharrington, knight; Mary Seimor, daughter to Sir Thomas Seimor, knight, Lord Seimor of Sudley, late Admiral of England; of Thomas Isley, Esq.; and Sir William Hussey, knight. (5 & 6 Edw. VI.) Restitution in blood of Sir John Neville, of Chete; and John Fortescue, son of Sir Adryan Fortescue, knight. (7 Edw. VI.) Restitution in blood of Sir Edward Seymour, knight, son and heir of Edward, Duke of Somerset, and the Lady Katherine Fylott, his first wife.

Mary:—
The
Courtneys,
Howards, and
Catholic
nobles and
gentlemen.

(1 Mary.) Restitution in blood of Lady Gertrude Courtney, late wife of Henry Courtney, late Lord Marquis of Exeter; of Sir Edward Courtney, knight, Earl of Devon. (Sess. 2.) Restitution in blood of Sir Thomas Howard, knight, otherwise called Thomas Howard, Earl of Surrey; of Sir Edward Seymour, knight, eldest son of the late Duke of So-

merset, born of the Lady Ann, his last wife; of the heirs of Henry Pool, late Lord Montague; of Sir Marmaduke Constable, knight; of Thomas Stanhope, Esq.; of Mathew Arundel, Esq.; of the heirs of Sir Miles Partridge, knight. (1 Mary, Sess. 3.) Restitution in blood of Sir William Parr, knight, Marquis of Northampton.

(1 & 2 Philip & Mary.) For repealing the attainder of the Lord Cardinal Poole; for repealing all attainders and outlawries had or made against Richard Pate, William Petowe, Thomas Goldwell and others. (2 & 3 P. & M.) Restoring the heirs of Sir Edward Nevill, knight, to the remainder of the barony of Burgavenny. (4 & 5 P. & M.) Restitution in blood of Sir Ambrose Dudley and Sir Robert Dudley, knights.

Philip and Mary:—
Cardinal Pole.

(1 Eliz.) An Act whereby the Queen's Highness is restored in blood to the late Queen Ann, her Highness's mother. Restitution in blood of Lord John Gray; of Sir James Crofts, knight; of Sir Henry Gates, knight; of Robert Rudston, Esq. Declaring the repeal of the attainder of the late Cardinal Poole. Restitution in blood of the children of Edward Lewkenor, Esq.; of Lord Dacres of the South; of Henry Howard, Jane Howard, and Katherine, wife to Lord De Barkley. (5 Eliz.) Restitution in blood of William West, Esq.; of Sir Peter Carew, knight; of Sir Ralph Chamberlayne, knight, and John Harleston; of Thomas Cobham, William Cromer and others; of the heirs of Thomas Isley; of the heirs of William Thomas; of the heirs of Leonard Diggs; of the heirs of Thomas Cranmer, late Archbishop of Canterbury; of the heirs of Sir H. Isley, knight; and of Edward Turner. (13 Eliz.) Restitution in blood of Sir Thomas Wyatt's children; and Henry Brereton, Esq. (18 Eliz.) Restitution in blood of Henry Norris, knight, Lord Norris of Rycott. (23 Eliz.) Restitution in blood of Philip, Earl of Arundel; of John Seyntleger and Dudley Seyntleger; and of Anthony Mayne, Esq. (27 Eliz.) Restitution

Elizabeth:—
Anne Boleyn.

Lord Dacres.

Archbishop Cranmer.

Sir Thomas Wyatt.

Earl of Arundel.
St. Legers.

Lord Howard. in blood of Thomas Lord Howard. (35 Eliz.) Restitution in blood of Sir Thomas Perrott.

James I. :—
Lord South-
ampton and
others.

(1 James I.) Restitution in blood of Henry, Earl of Southampton; of the son and two daughters of Robert, late Earl of Essex; of Thomas, only son of Philip, late Earl of Arundel; of William Howard, youngest son of Thomas, late Duke of Norfolk, and of the children of Lady Margaret Sackville, his daughter; of William Pagett, only son of Thomas, late Lord Pagett; of Thomas Lucas, gentleman; of Thomas Littleton, eldest son of John Littleton, late of Francley, in the county of Worcester, Esq., deceased, and various members of the same family. (3 James I.) For the restoring and enabling of Henry, Lord Danvers, as son and heir to Sir John Danvers, knight, deceased, notwithstanding the attainder and corruption of blood of Sir Charles Danvers, knight, deceased, elder brother of the said Lord Danvers. Restitution in blood of John Holland, son of Brian Holland, and Thomas Holland, his son; of Rowlande Mericke, son of Sir Gelley Mericke, knight, and Dame Margaret, wife of Sir John Vaughan, knight, daughter of Sir John Gelley. (4 James I.) Restitution in blood of the sons and daughters of Edward Windsor. (7 James I.) Restitution in blood of the son and two daughters of George Brooke, late attainted of high treason.

Lord
Danvers.

Charles I. :—

(3 Charles I.) Restitution in blood of Carew Raleigh,¹ son

¹ This Bill was promoted, in 1624, in the House of Commons. There was a debate, in which Sir Edward Coke, Mr. Noy and Mr. Selden, took part, upon the question whether the Bill ought not properly to begin in the Lords. Upon a search for precedents, twenty-two were found in which Restitution Bills began in the Lords and fourteen in the Commons. Thereupon the Bill was passed, but the other House took exception to this interference with their privileges, and did not proceed with the

Bill, which only became law in 1628. (3 Hatsell, 48.) In Dr. Birch's Life of Sir Walter Raleigh, it is related that Charles I. would not sign or pass this Restitution Bill until Carew Raleigh waived his right to Sherborne Castle and estate, which the King had promised to the Earl of Bristol "on the obligation of 10,000*l.*," undertaking in return to secure the earl's title, against the heirs of Sir Walter Raleigh. "Being then not twenty years of age, and left friendless and fortuneless, Carew

of Sir Walter Raleigh, late attainted of high treason, and for confirmation of certain letters patent made by our late Sovereign Lord King James to John, Earl of Bristol, by the name of John Digby, knight.

Sir Walter Raleigh.

(12 Charles II.) The restitutions in this reign naturally relate chiefly to honours and lands of which the royalists were deprived during the Commonwealth. Acts were passed restoring unto James, Marquis of Ormond, all his honours, manors, lands and tenements in Ireland, whereof he was in possession on the 23rd of October, 1641, or at any time since;¹ unto Morough, alias Morgan, Earl of Inchiquin, all his honours, manors, lands and tenements in Ireland, whereof he was in possession on October 23, 1641, or at any time since; unto William, Marquis of Newcastle, all his honours, manors, lands and tenements in England, whereof he was in possession on May 20, 1642, or at any time since; Sir George Lane to the possession of the manors of Rathelive and Lisduff, and other lands in Ireland; Charles, Lord Gerrard, baron of Brandon, all his honours, manors, lands, tenements and hereditaments, whereof he was in possession on May 20, 1642, or at any time since; John, Lord Culpeper, son and heir and sole executor to Thomas, Lord Culpeper, baron of Thorsway, and Master of the Rolls, deceased, all the honours, manors, lands and tenements, leases not determined, and hereditaments whatsoever, whereof the said John, Lord Culpeper, was in possession on May 20, 1642, or at any time after, which have not been since sold or aliened by the said John, late Lord Culpeper, by acts or assurances to which himself was party and consenting: The Marquis of

Charles II.:—
Marquis of Ormond,
Earl of Inchiquin,
and Duke of Newcastle.

Sir George Lane, Lord Gerrard.

Lord Culpeper.

Raleigh was prevailed upon, by the prospect of a subsistence, to submit to the King's will." The truth of this story (says Hatsell) is confirmed by the full title of the Act, which is not only one for Carew Raleigh's restitution in blood, but confirms a grant made by King James to Lord

Bristol.

¹ On this date, which occurs more than once in the Irish Restitution Acts of the period, the insurrection, which was headed by Roger More, broke out in Ireland and there was a massacre of the Protestant settlers.

Duke of
Somerset.
Lord
Arundel, of
Wardour, the
Duke of
Norfolk, and
Earl of
Roscommon.

Earl of
Strafford.

William and
Mary:—
Lord William
Russell and
Algernon
Sidney.

Anne:—

George I.:—

Hertford to the Dukedom of Somerset; Henry, Lord Arundell, of Warder, to the possession of his estate; Thomas, Earl of Arundell, Surrey and Norfolk, to the dignity and title of Duke of Norfolk; to Wentworth, Earl of Roscommon, of the kingdom of Ireland, all the honours, castles, lordships, lands, tenements and hereditaments in Ireland, whereof James, Earl of Roscommon, his great grandfather, Robert, Earl of Roscommon, his grandfather, or James, late Earl of Roscommon, his father, were in possession on October 23, 1641; to Sir George Hamilton, his lands and estates in Ireland; to Sir Thomas Grimes, his estate. (13 Charles II.) Restoring to Thomas Radcliffe, Esq., all his lands and possessions in England and Ireland. (Sess. 2.) Confirming Acts for restoring the Marquis of Hertford in the Dukedom of Somerset, and Thomas, Earl of Arundell, Surrey and Norfolk, to the dignity and title of Duke of Norfolk. (13 & 14 Charles II.) Reversing the Earl of Strafford's attainder; confirming the Act of restitution to Thomas, Lord Culpeper. (16 & 17 Charles II.) Restoring Sir Charles Stanley in blood. (19 Charles II.) Restoring Francis Seawen in blood. (29 & 30 Charles II.) Restoring the honour of Baron Audley, of Hely, to James, Lord Audley and others.

(1 Will. & Mary, Sess. 1.) Annulling and making void the attainder of William Russell, Esq., commonly called Lord Russell; annulling and making void the attainder of Algernon Sydney, Esq.; annulling and making void the attainder of Alice Lisle, widow; reversing the attainder of Henry Cornish, Esq., late Alderman of the city of London.

(6 Anne.) Reversing the attainder of Sir Henry Bond, baronet, in Ireland. (7 Anne.) Reversing the outlawry and attainder of Christopher, Lord Baron of Slane, in Ireland; reversing the outlawry of Eleanor Bagot, wife of John Bagot.

(1 Geo. I.) For more effectually reversing and making void the attainder of Charles, Earl of Macclesfield, deceased. (9 Geo. I.) Enabling John Sinclair, eldest son of Henry, late Lord Sinclair, deceased, to sue or maintain any action or suit,

notwithstanding his attainder; and to remove any disability in him, by reason of his said attainder, to take or inherit any real or personal estate that may or shall hereafter descend or come to him; the like enabling Act, in favour of William Murray, taking effect from his late Majesty's most gracious pardon.

(16 Geo. II.) For restoring Francis, Duke of Buccleuch, to the dignities and titles of Earl of Doncaster and Baron Scot, of Tindal. (33 Geo. II.) Enabling George Keith, late Earl Marishall, to sue or maintain any action or suit, notwithstanding his attainder, and to remove any disability to inherit. George II.:—
Duke of
Buccleuch,
and Keith,
Earl Maris-
chal.

(59 Geo. III. c. 93). For restoring to their blood Edward Fox Fitzgerald and his sisters Pamela and Lucy, children of Lord Edward Fitzgerald. Geo. III.:—
Lord Edward
Fitzgerald.

(5 Geo. IV.) For restoring James Drummond, Esq., to the dignity and title of Viscount of Strathallan;¹ restoring John Francis Erskine, of Mar, to the dignity and title of Earl of Mar;² restoring John Gordon, Esq., of Kenmure, to the dignity and title of Viscount Kenmure; restoring William Nairne, Esq., to the dignity and title of Lord Nairn; reversing the attainder of William, late Viscount Stafford. (7 Geo. IV.) For restoring David Ogilvy, Esq., and others from the effects of the attainders of James, eldest son of David, Earl of Airlie, and of David Ogilvy, taking upon himself the title of Lord Ogilvy; restoring James Sutherland, Esq., to the dignity and title of Baron Duffus; restoring Patrick Murray Threipland, of Fingask, to the dignity of a baronet; and restoring Francis, Baron Wemyss and others from the George IV.:—
Earl of Mar,
Lord Ken-
mure, Lord
Nevin.

Earl of Airlie,
Lord Ogilvy,
Lord Duffus,
Sir P. M.
Threipland,
and Lord
Wemyss.

¹ This and the other Restitution Bills of the Session were, in conformity with practice, presented to the House of Lords by the Earl of Liverpool, signed by the King.

² There was a public Act, "exhibiting a Bill for his restoration"

(5 Geo. IV. c. 59); that quoted in the text is a private Act, 5 Geo. IV. c. 47. Nearly all the Restitution Acts from this period remit the penalties of attainder incurred during the Jacobite risings.

effects of the attainder of David Wemyss, commonly called Lord Elcho.

Queen
Victoria:—

Lord
Drummond.

Simon, Lord
Lovat.

Earl of
Southesk.

How far reaching are the effects of attainder may be gathered from the following private Bills which, even during the reign of Queen Victoria, families whose ancestors were declared to be of corrupt blood have felt constrained to promote for reversing old attainders. (11 & 12 Vict.) For the restitution in blood of William Constable Maxwell, Esq. (16 & 17 Vict.) For the restitution in blood of George Drummond, Esq., Duke de Melfort and Comte de Lussan, in France, and to relieve the said George Drummond and the heirs male of James, first Earl of Perth, from the effect of the attainder of James Drummond, commonly called Lord Drummond, eldest son of James, fourth Earl of Perth, and from the effect of the attainder of John Drummond, second son of the said James Drummond, and from the effect of a decreat of forfaiture pronounced by the Parliament of Scotland against John, Earl of Melfort.¹ (17 & 18 Vict.) To relieve Thomas Alexander, Lord Lovat, Baron Lovat, of Lovat, in the county of Inverness, from the effect of the attainder of Simon, Lord Lovat. (18 & 19 Vict.) To relieve Sir James Carnegie, of Southesk, Kinnaird and Pittarrow, baronet, from the effect of the attainder of James, fifth Earl of Southesk

¹ Notice being taken in the House of Commons on this Bill that her Majesty's consent had not been given, though the Bill had been read a first time, the proceedings upon the Bill were declared null and void. It was then re-introduced, and upon a motion for the first reading "Sir William Molesworth, by her Majesty's command, acquainted the House that her Majesty, having been informed of the purport of the Bill, gives her consent, as far as her Majesty's interest is concerned, that the House may do therein as they shall think fit."

(108 Com. Journ. 598, June, 1853.) The Bill was afterwards referred to a Committee, consisting of Col. Blair, Lord John Russell, Viscount Palmerston, Sir James Graham, Mr. Disraeli, the Lord Advocate, Mr. Attorney-General, the Judge Advocate, Sir Frederick Thesiger, Sir John Pakington, Sir John Young, Lord Alfred Hervey, Mr. Sotheran, and (following the old form) "all the members of this House who are of her Majesty's most honourable Privy Council, and all the gentlemen of the long robe."

and Baron Carnegie, of Kinnaird and Leuchars, in Scotland. (34 & 35 Vict.) To relieve Francis Thomas de Grey, Earl Cowper, Knight of the most noble order of the Garter, and the heirs for the time being of the body of Richard, Earl of Desmond, in the peerage of Ireland, and Lord Dingwall, in the peerage of Scotland, and the heirs for the time being of the body of Thomas, Earl of Ossory, in the peerage of Ireland, and Lord Butler, of Moore Park, in the peerage of England, from the effect of the attainder of James, second Duke of Ormond.

Relief of Earl Cowper, in 1871, from attainder of James, Duke of Ormond.

One of the Acts of 1824, given in the foregoing list, that "reversing the attainder of William, late Viscount Stafford," was the revival of a Bill unsuccessfully promoted under the same title, and with the same object, in the year 1685. In October, 1678, Lord Stafford, with other Roman Catholic noblemen, the Earl of Powis, Lord Petre, Lord Arundell of Wardour, and Lord Bellasis, were committed to the Tower "upon the single testimony of Titus Oates,"¹ on a charge of high treason. A Bill of attainder was passed, and Viscount Stafford was beheaded on December 29, 1680.² Five years afterwards, on May 27, 1685, a Bill reversing the attainder was presented to the House of Lords, signed by

Restitution Bill, dropped in 1685, passed in 1824.

Lord Stafford's attainder.

¹ This is the statement in a petition presented to the Lords, May 19, 1685, by the Earl of Powis. Lord Arundell of Wardour, and Lord Bellasis, had been imprisoned in the Tower since their commitment in 1678, and now urged their innocence of the "detestable treasons laid to their charges, and of all traitorous designs and conspiracies whatsoever." (14 Lords' Journ. 7.) They were released a few days afterwards.

² Charles II., though believing him to be innocent, had not the moral courage, in the face of popular clamour and excitement, to spare his life, but mitigated the ordinary

sentence of treason to beheading; and the sheriffs and others (Lord William Russell and Alderman Henry Cornish among the number) had the barbarity to question the King's power to do so. (Annals, 478.) Both Lord William Russell and Cornish were afterwards executed, and their representatives, as the text shows, obtained Acts of restitution. See proceedings of Lords' Committees, appointed in 1689, "to consider who were the advisers and prosecutors of the murders of the Lord Russell, Col. Sidney, Sir Thomas Armstrong and Mr. Cornish." (14 Lords' Journ. 377 *et seq.*)

Titus Oates.

James II.¹ The Bill was hotly debated, and referred to a Committee of the whole House, the Earl of Bridgwater acting as chairman. During the proceedings the records of the Court of King's Bench were read, "being the trial of Otes" (*sic*) in this court.² The Committee reported in favour of the Bill, which was ultimately agreed to, but not without several remonstrances, including the following curious protest by the Earl of Anglesey and other peers.

Protest
against Bill
reversing
attainder.

"1. Because the assertion in the Bill of its being now manifest that the Viscount Stafford died innocent, and that the testimony on which he was convicted was false, which are the sole grounds and reasons given to support the Bill, are destitute of all proof, warrant, or testimony of witness, or matter of record before us.

"2. That the record of the King's Bench, read at the Committee, concerning the conviction last term of one of the witnesses for perjury, in collateral points of proof, of no affinity to the Lord Stafford's trial, and given several years before, it's conceived can be no ground to invalidate the testimony upon which the said Viscount was convicted; which could never legally be by one witness, and was, in fact, by the judgment of his Peers, on the evidence of at least three.

"3. It's conceived the said judgment in the King's Bench, and the whole proceedings, was unprecedented, illegal, and unwarranted, highly derogatory to the honour, judicature, and authority of this Court, who have power to question and punish perjuries of witnesses before them, and ought not to be imposed upon by the judgments of inferior Courts, or their attainders of a Peer invalidated by implication, and the Popish plot, so condemned, pursued, and punished by his late

¹ 14 Lords' Journ. 19.

² On May 9, 1685, Titus Oates had been convicted of perjury in exposing the alleged popish plot, and sentenced to be whipped, put in the pillory, and imprisoned for life. It is evident, from the proceedings in Parliament, that even then he had many sympathisers in both Houses. At the Revolution he was released and pensioned. A Bill passed the Lords for reversing the judgments against him in the King's Bench,

but did not become law. There were strenuous protests by the following peers against provisos to this Bill, which declared Oates incapable of giving evidence in any Court until Parliament had heard and determined the matters on which he was convicted:—Duke of Bedford, Earls of Sussex and Suffolk, and Lords Vaughan, Newport, Stamford, Charles de Berkeley, Cornwallis, Paget, Macclesfield, Montagu. (14 Lords' Journ. 277, July 12, 1689.)

Majesty and four Parliaments, after public solemn devotions through the whole kingdom, by authority of Church and State, to be eluded, to the arraignment and scandal of the Government, and only to the restoring of the family of one Popish lord; and all this being without any matter judicially appearing before us to induce the same, and the records of that trial not suffered to be read for information of the truth before the passing of the Bill.

“Lastly. For many other weighty reasons offered and given by divers Peers in the two days’ debate of this Bill, both in the Committee and the House.”¹

The Bill was sent down to the Commons, and was there ordered to be referred to a Committee of the whole House. But no Committee was nominated, and the Bill dropped. The Duke of Monmouth landed at Lyme on June 11, and possibly the House of Commons, though it voted a loyal address, and passed in hot haste a Bill for his impeachment and attainder, was not sorry of the opportunity which this new excitement offered for shelving the Stafford Restitution Bill. It is singular that, after the lapse of a hundred and forty years, it should have been found necessary to remove this taint in the blood of a noble family.

A personal Act of which no other example can be found was passed in 1477—8, and may be given here, as it is not printed in any collection of the statutes. In a marginal note to the rolls of Parliament its object is described as being “for degrading George Nevil³ from the title of Duke” (*degradatio Georgii Nevell de nomine Ducis*). The original is in English,⁴ and the old spelling is retained:—

George
Neville
deprived of
Dukedom of
Bedford,
17 Edw. IV.

“Wher afore this tyme, the Kyng oure Soverayne Lord, for the gret zeell and love he bare to John Nevell, late named Marquies Mounttague, and oder considerations hym moving,

¹ 14 Lords’ Journ. 29, June 3, 1685.

This protest was offered on a motion that the Bill be ingrossed. Other protests were handed in upon the passing of the Bill. (*Ib.* 30.)

² 9 Com. Journ. 731, June 6, 1685.

³ In the rolls of Parliament the name of this ancient family is spelt with the following variations:—Nevil, Nevell, Nevile, Nevill, Neville, Nevyel, Nevyle, Nevyll.

⁴ 6 Rot. Parl. 173 (17 Edw. IV.).

erecte and made George Nevell, eldest son of the seid Marques, to be Duke of Bedford; and at that tyme, for the grete love his seid Highnesse bare to the seid John Nevell, purposed and intended to have guyffen to the seid George, for sustentation of the same dignite, sufficiaunt liffelode; and for the grett offences, unkyndnese and mysbehavyns that the seid John Nevell hath doon and commytted to his seid Highnes, as is openly knowen, he hath no cause to departe (*sic*) any liffelode to the seid George:

By reason of
poverty.

"And for so moch as it is openly knowen that the same George hath not, nor by enheritaunce mey have, eny lyffelode to support the seid name, estate, and dignite, or eny name of estate; and ofte tymes it is seen that when eny Lord is called to high estate, and have not liffelode conveniently to support the same dignite, it induces gret poverté, indigens, and causes oftymes grete extortion, embracere and mayntenaunce to be had, to the grete trouble of all such contres wher such estate shall hape (happen) to be inhabitet:

Creation of
Dukedom and
Marquisate
declared void.

"Wherefore the Kyng, by the advyse and assent of his Lordes spirituall and temporell, and the Comons, in this present Parliament assembled, and by the auctorite of the same, ordered, establisith and enactith that, fro hens forth, the same erection and making of Duke, and all the names of dignite guyffen to the seid George, or to the seid John Nevell, his fader, be from hens forth voyd and of no effecte: And that the same George and his heires from hens forth be no Dukes, nor Marques, Erle nor Baron, nor be reputet nor taken for no Dukes, nor Marques, Erle nor Baron, for no erection or creation afor made; bot of that name of Duke and Marques, Erle and Baron, in hym and his heirez cesse and be voide, and of non effecte; the seid erection or creation notwithstanding."

Acts of
Parliament
not collected
in statute
book.

Clearly this enactment was of statutory force. Yet it is one of the many Acts of Parliament referred to by Sir E. Coke "that be on the rolls of Parliament and never yet printed."¹ Since Coke's day these rolls have been printed, but they are not generally accessible. It might have been expected, after the report of the Committee of the House of Commons upon Public Records, in the year 1800, that a complete collection would have been made of the statutes of the realm. The Record Commissioners, however, do not seem to have been authorized to reprint from the rolls of Parliament

all the Acts there preserved, though not inrolled in Chancery. The Record Commissioners say:—"It is certain that many Acts and matters not found on the statute roll, nor contained in any printed editions of the statutes, are found on the Parliament rolls, which appear to have received the threefold assent of King, Lords and Commons, or to have such qualities as have been allowed by Courts of law to imply that assent." They mention the report of the Earl of Macclesfield's trial in 1725, before the House of Lords, on impeachment for extortion in his office of Chancellor, when an entry on the Parliament rolls in 2 Henry IV. was quoted by the managers of the impeachment as of statutory authority. This was a petition by the Commons "that no Chancellor, Judge, &c., should take any gift or brocage for doing their office," to which the King's answer "*Le roi le veut*" is subjoined; and it was urged in argument as "common learning" that the Parliament roll was the voucher to the statute roll.¹

But the Record Commissioners, owing in part no doubt to the difficulty of selection from a mass of materials, of more or less doubtful authority, left undone the work to which they referred;² and at this day public and private Acts down to the reign of Henry VII., must be looked for in other volumes be-

¹ Int. to Stat. of Realm, 31, 32, and instances there mentioned. The creation by Edward III. of his eldest son to be Duke of Cornwall was, by the King's letters patent, recited to be "*de communi assensu et consilio prelatorum, comitum, baronum, et aliorum de consilio nostro in presenti Parlamento.*" The necessity of consulting the petition and answer, or the entry thereof on the Parliament roll, as the warrant for the statute roll, was much insisted on, upon the authority of Sir Francis Bacon and other eminent lawyers, in the arguments upon the jurisdiction in Chancery, annexed to Vol. I. of Cases in

Chancery.

² At their first meeting in December, 1800 (present:—the Speaker, Mr. Addington; Lord Frederick Campbell; Sir William Grant, Master of the Rolls; and Mr. Charles Abbot), it was resolved:—"That a complete and authentic collection of the statutes of the realm be prepared; including every law, as well those repealed or expired as those now in force," but this plan was not carried out in its integrity. The first volume of the Commissioners appeared in 1811. It includes some personal Acts, but the principle of selection is not clear.

Private Acts,
17th Edw.
IV., only
recorded in
Parliament
rolls.

sides those of the statute-book proper. Some estimate may be formed of these omissions when it is stated that in the Session in which Neville was degraded, in the year 1477—8, fourteen other private Acts were passed which are only recorded in the rolls of Parliament. They are Acts (1) for settling certain estates in consequence of the marriage of the King's son, Richard, Duke of York, with Anne, infant daughter and heiress of the late Duke of Norfolk; (2) for effecting an exchange of lands between the King and the Duke of Gloucester; (3) the like between the King and the Duke of Suffolk; (4) for enabling the Duke of Gloucester to alien certain advowsons in mortmain, part of the estates of his wife; (5) for reversing a verdict and judgment of felony, given and pronounced on the prosecution of the Duke of Clarence, against Ankaretta Twynho, widow, for poisoning the Duchess of Clarence; (6) for restitution of Sir Anthony Notehill (or Nuttyll), knight, and Walter Nuttyll, Esq., attainted in Parliament, 1st Edw. IV.; (7) for restitution in estate of Sir Thomas Vere; (8) for restitution of Sir W. Fynderne, knight, attainted in Parliament, 1st Edw. IV.; (9—12) for paving Canterbury, Taunton, Cirencester and Southampton; (13) for Sir Ralph Assheton, knight, to proclaim and attain certain rioters; (14) for putting an end to certain actions against the Corporation of the Staple at Calais. Each of the petitions for these Bills is perfected by the King's assent "*Soit fait come il est desire*," and the entry in the rolls sets forth the proper enacting words, showing that Lords and Commons had agreed.¹

One of the fourteen petitions, or Bills, that of Roger Twynho,² shows the length to which great nobles then ventured in redressing private wrongs. It reports, with great precision, a tragical incident, which seems to be a clear case of judicial murder. Isabel, wife of the Duke of Clarence, a brother of Edward IV., is said to have died of poison with

¹ 6 Rot. Parl. 168—182.

² Ib. 173 (A.D. 1477—8).

her youngest child. How this supposed poisoning was avenged the petition relates. It is addressed to the Commons,—“Lamentably, in most piteous and humble wise, complaineth and sheweth unto your great wisdoms,” Roger Twynho, cousin and heir of Ankaretta Twynho, of Cayford, Somersetshire. He relates that on the 12th of April last past, Ankaretta being at her manor of Cayford, in God’s peace and the King’s, there came to her various riotous and misgoverned persons by command of the Duke of Clarence; and these persons, without ground or matter, against all right, truth, and conscience, intending her utter destruction and death, broke and entered her house with great fury and wodenesse (*sic*), though Ankaretta was of good name and fame, and then and there, without writ, warrant, or other lawful authority, carried her to Bath, not suffering her to tarry in her own house to take any convenient ease, nor so that any of her servants might accompany her. From Bath, in like duress, they carried her to Cirencester, and thence to Warwick, seventy miles from Cayford, where they took from her such jewels, money, goods, and chattels as she had about her; and there, in the Duke’s behalf, as though he had used a King’s power, commanded her daughter and her husband, and their servants, who had followed Ankaretta, to leave Warwick upon pain of death, and to lodge at Stratford-on-Avon, not suffering them to speak to her.

Ankaretta Twynho charged with poisoning Duchess of Clarence.

At Warwick they kept their prisoner in duress for two days, and then, with like force and violence, brought her to the Guildhall before divers justices, when the Duke, in accomplishing of his “subtle conjectured imaginations,” untruly and ungoodly, against all truth and conscience, laboured and caused her to be indicted for maliciously and damnably intending the destruction and death of Isabel, his duchess, by falsely, traitorously, and feloniously giving unto the said Isabel a venomous drink of ale with poison to drink, of which she sickened and died. Pleading not guilty to this charge, a jury appeared, and Ankaretta was convicted. Thereupon it

Tried, condemned and executed at Warwick, three days after arrest.

was considered and deemed by the justices that she should be led from the bar unto the gaol at Warwick, and thence should be drawn through the midst of the town unto the gallows of Myton, to be hanged thereon until she were dead; and they commanded the sheriff of the county, there then being, to do execution, and so he did. Thus she was arrested in her own house on Saturday, tried on the following Tuesday, and on that day the indictment, trial, and judgment were had, done, and given within the space of three hours. The petition adds that for fear and dread of great menaces, and doubt of loss of their lives and goods, the jurors found this verdict contrary to their own understanding, truth, and conscience; in proof whereof, divers of them, after judgment given, came over to Ankaretta, having great remorse of conscience, knowing they had given an untrue verdict in that behalf, humbly and piteously asking from her forgiveness thereof.

Appeal to
Commons for
redress.

Abandoning then his narrative, the petitioner appeals to the Commons as his natural protectors against oppression:—

“Please it, your great wisdoms, considering this unlawful taking, duress, imprisonment, conveyance, and carrying the said Ankaretta through three several shires, the inordinate hasty process and judgment, her lamentable and piteous death, and her good, virtuous, and true disposition all her life, as is openly known in the county of Somersett and the adjoining counties, where she was the more part of her lyff dwelling and conversant, to pray the King to ordain and establish, by assent of his Lords Spiritual and Temporal, and by authority of Parliament, that the record of the indictment, the process thereupon made, the verdict and judgment thereupon given, and all things depending upon the same, be cassed” (broken, quashed), “annulled, voided, repealed, and of no force nor of none effect.” But the petitioner displays a judicious moderation, and considerably desires to hold those persons blameless who carried out the sentence under fear of the prosecutor. He asks, therefore, that “forasmuch as all the premises were done by the commandment, might, and

Indictment
quashed.

strength of the Duke of Clarence,¹ and in no otherwise," it should be ordained by Parliament, "that none of the justices, sheriff, under-sheriff, nor their ministers, nor any other person be sued, vexed, nor grieved for the taking, imprisonment, judgment, nor execution" of his cousin Ankaretta. After this petition follows the usual Latin form, but with a slight variation in the words italicised:—"Qua quidem petitione in Parlamento predicto lecta, audita et plenius intellecta, de avisamento et assensu dominorum spiritualium et temporalium in dicto Parlamento existen., *et ad specialem supplicationem communitatis predictæ*,² necnon ejusdem Parliamenti auctoritate, respondabatur eidem in forma sequenti—'Soit fait come il est desire.'"

King's assent
given at
special re-
quest of
Commons.

From penal Acts and the often inadequate attempts to mitigate them, it is a relief to pass to other statutes affecting private interests. An example of a case, one might have supposed too small to disturb the dignity of Parliament, occurs in the reign of Henry VI., when Humphrey, Duke of Gloucester, was licensed to lay out Greenwich Park, and to make towers with battlements.³ Parliament intervened in a still smaller matter in a subsequent reign. The Abbot and Convent of Barking had been bound, by tenure, to repair 467 perches of the park pale in the King's manor of Havering, in Essex. This service was commuted by letters patent of Richard II. for a yearly sum of five

Humphrey,
Duke of
Gloucester,
and Green-
wich Park.
Abbot of
Barking.

¹ The Duchess of Clarence, supposed to have been poisoned by Ankaretta, was a daughter of the Earl of Warwick. The Duke himself came to a violent end. In 1477, he was convicted of attempting, "by art magic," the death of Edward IV., and soon afterwards was "found dead" in the Tower. The mercy which he had not shown to his wife's attendant, Ankaretta, was denied to him by his brother; and his son and daughter, Edward, Earl of Warwick, and Margaret, Countess of Salisbury,

suffered death in the Tower under the Tudors.

² Most of the corresponding forms in other private Acts of the same Session simply record the assent of the Commons, along with that of the other House. Two of the Paving Acts and Assheton's Act are said to be passed "*ad supplicationem*" of the Commons; the third, that of Canterbury, contains the form given in the text.

³ 15 Hen. VI.

marks, but there was a doubt whether this sum was parcel of the manor or a sum by itself. To clear up this knotty point, "and set it in certainty for ever," the Abbot and his five marks have a statute all to themselves, and by authority of King, Lords, and Commons, the money is declared to be parcel of the manor.¹ These are early examples of very numerous Estate Acts, passed for facilitating exchanges of land, relaxing the strict incidents of tenure, and supplying the want of adequate powers to sell or lease in settlements or wills. Such Acts are too technical to be dealt with here, and the necessity for them has greatly diminished during the present reign by general legislation giving powers of various kinds to limited owners.²

First naturalization, by King's grace, A.D. 1295.

The first recorded naturalization occurred in 1295, and was allowed, not by Act, but by the King's grace. This privilege was given to Elias Daubeney, or D'Aubigny, for services to Edward I. and his predecessors. The terms of the grant are short:—

"Dominus rex, de gratia sua speciali, et ob laudabilia servitia que Elyas Daubeney et antecessores sui fecerunt ipsi domino regi et progenitoribus suis, prefato Elye concessit, et vult—Quod ipse Elias de cetero in quibuscumque curiis suis Anglie audiatur ut Anglicus; Et quod sibi respondeatur ut Anglico; Et quod non repellatur per illam exceptionem quod alienigena est, et natus in partibus transmarinis. Quia dominus rex ipsum Elyam Anglieum purum tenet, Et vult quod sic ab aliis in regno suo reputetur et teneatur."³

Naturalization by Act, 1406.

But the next instance of naturalization, recorded in the rolls of Parliament in 1406, is accomplished by Act. The case is that of David Holbeach, or Holbacke, a Welshman, who had suffered much loss of land, rents, and goods in the Welsh rebellion. The Commons petition in his favour, alleging that Holbeach and his ancestors have been faithful and loyal subjects of the English Crown, both before and

¹ 7 Hen. VII. c. 14.

amended by 47 & 48 Vict. c. 18.

² See especially the Settled Land Act, 1882 (45 & 46 Vict. c. 38),

³ 1 Rot. Parl. 135 (23 Edw. I.).

after the conquests of Wales. They recite an Act¹ that no Welshman should serve the King or should be capable of holding land in England; and they ask that Holbeach should be relieved from these disabilities and be allowed the same liberties as English subjects. This petition is granted, on behalf of an individual, by Henry IV. in the form of assent proper to public Acts.² There are Acts also confirming letters patent making denizen the alien priory of Mountagu, county Somerset,³ and enabling Beatrice, widow of Thomas, Earl of Arundel, and of Portuguese birth, to enjoy her dower as though she had been born in England.⁴ The following is the text of an Act for the naturalization of Jacquetta, Duchess of Gloucester,⁵ passed in the year 1423. It is taken from the Rolls of Parliament, and is not published in any collection of the statutes:—

“Item, une autre supplication fuit baille en mesme le Parlement pur la noble et tres honoure Dame Jacque Duchesse de Gloucestre, en la fourme ensuant:—“Please au roy mon tres noble seigneur, de l’assent et advis des seigneurs de cest present Parlement, graunter a votre humble cousine Jaque Duchesse de Gloucestre, q’ele soit fait Denzeisne,⁶ et que elle come Denzeisne et votre liege femme, si bien deinz le roialme d’Angleterre, come aillours deinz vos poair (pouvoir?) et

Jaqueline,
Duchess of
Gloucester,
made denizen,
2 Hen. VI.

¹ 2 Hen. IV.

² 3 Rot. Parl. 601 (7 & 8 Hen. IV.).

³ 4 Ib. 27. The exact form of assent is peculiar—“Le roy le voet, de l’assent des seigneurs espirituels et temporelx, a la petition et especiale requeste des communes en cest present Parlement assemblez.”

⁴ Ib. 130. A.D. 1421. It is a petition for an Act by the Countess, after which comes this form:—“La quele petition leu en ceste Parlement, fuist a cella respondu en manere cyensuant:—“Le roy, de l’assent des seigneurs en ceste Parlement estantz, declarast overtement et ordinast en mesme Parlement, pur la suppliante nomez en mesme la petition, sicome ele desira par la mesme.”

⁵ Jacquetta, or Jaqueline, of Holland, married her cousin, the Duke of Brabant, but the Duke of Gloucester persuaded her to leave him, on the ground that the marriage was void through consanguinity, and married her himself. He then invaded Hainault, claiming the provinces to which she was entitled, but was successfully resisted by her kinsman, the Duke of Burgundy. Her marriage with the Duke of Gloucester was set aside by Pope Martin V., and she afterwards died in great poverty in Holland.

⁶ Denizen is usually derived from donaison, because he enjoys a privilege granted *ex donacione regis*.

Power to purchase and hold land, with succession.

Right to sue, and be sued, in English Courts, as English-born subject.

Petition granted, with assent of Commons.

Royal letters of denization, confirmed by Act, 1423.

seigneurie, soit eux, tenuz, treatez et reputez. Et qu'ele toutz maners, privileges, liberties, franchises et custumes, come ascune persone liege, neez deinz vos ditz reialme, seigneurie et poiar, user et enjoier purra franchement et quitement pour toutz jours. Et outre, q'ele deinz le dit reialme, et aillours deinz vos poiar et seigneurie, terres, tenements, rentes, services, fees, avocons, choses, droitz et possessions quiconques, loialment purra purchaser,¹ si bien en demesne come en reversion. A avoir a ele, et ces heirs, ou a ele et a ces heirs de son corps engendrees, ou autrement, en quicunque, fee taille, ou a terme de sa vie, ou d'autre vie, ou a terme d'anz, et les tenir en la fourme avaunt dit; saunz emphechement ou impediment de vous et de vos heirs; et mesmes les terres, tenementz, rentes, services, fees, avocons, choses, droitz et possessions, a aultres donner et alierer come la ley d'Engleterre demande. Et que elle purra avoir et pursuer en toutz vos courtees, et autres courtees deinz votre dit roialme, ou aillours deinz vos ditz poiar, et seigneurie, toutz maners actions, roials et personels et mixtes, et d'iceux emplerer et estre empledez, et en iceux respoundre et estre respoundez, en mesme le manere, et auxi franchement, come ascun de vos lieges nees deinz votre dit roiaulme, saunt fin ou fee ent paier a votre oeps,² ce que la dite suppliante n'estoit pas nee deins le roialme d'Engleterre, ou ascun aultre estatut ou ordennance fait au contraire, nient contresteaunt.'"

"La quele petition, par advis des Seigneurs espirituels et temporels, de l'assent des Communes en le dit Parlement assemblez, fuit respondu en la manere q'ensuit: 'Soit fait come il est desire par la petition.'"³

Similar rights of denizenship are granted in the same Parliament to Anne, Duchess of Bedford, wife to the uncle of Henry VI.⁴ In this case the petition of the Duchess has a schedule annexed, with a suggested form of letters patent carrying out her wishes; and, the petition and schedule being endorsed by advice of the Lords and at the request

¹ A denizen, made so by letters patent, might take lands by purchase or devise, but not by inheritance, because his parent, through whom he must claim, being an alien, had no inheritable blood. Denizens might, however, transmit property, because by denization their blood ac-

quired an hereditary quality. This distinction seems to be recognized in the text. Specific statutory powers were necessary to give to naturalization a retrospective effect.

² Use, benefit.

³ 4 Rot. Parl. 242.

⁴ Ib. 242—243.

of the Commons, the King's answer is—"Soient faitz lettres patentes desouz le grande seal du roy en due forme, solene la tenure du cedule a iceste annexe."¹ In 1430—1, a Welsh gentleman, Rys ap Madok, is naturalized in consideration of his services;² and W. Claydon, an alien, on his payment of a reasonable fine into Chancery,³ from which it would appear that the grant of these privileges sometimes afforded welcome means of replenishing the exchequer.

Among the numerous public Acts governing the naturalization of aliens, one passed in 1609 required "That all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord's Supper, and the oath of allegiance and the oath of supremacy."⁴ This Act was amended in 1826.⁵ A person seeking naturalization was required to go through many forms. The first step was a memorial to the Home Secretary, giving his reasons for desiring naturalization, and declaring that he professed the Protestant religion, intended to reside in England, and was well-affected to the government and to the British constitution. In corroborated

Public Acts
on naturaliza-
tion, 1609—
1870.

Forms ob-
served upon
naturaliza-
tion.

¹ The Naturalization Act, 1870 (s. 13), still preserves the right of the Crown to grant letters of denization.

² 4 Rot. Parl. 372; although Edward I. had formally annexed Wales to the English Crown. As to English subjects on the Continent, their rights here seem to have varied. The Normans, of course, had in England the position of English subjects; but after the final separation of Normandy from the English Crown, in the reign of John, Philip of France followed up his conquest by confiscating the lands in Normandy of all who adhered to the English monarch. In like manner the Normans who submitted to France were deemed aliens in England, and were deprived of their lands here, which were seized by the King as forfeited by the

transfer of their allegiance to the Crown of France. In this way large estates in Normandy were lost by the English nobles, especially by the family of Warren, Earls of Surrey, who were Earls of Warren in Normandy. Great part of the English territories in France did not belong to the Dukedom of Normandy, and these territories remained in the hands of John and several of his successors, after they had been deprived of Normandy; but the inhabitants of these parts seem generally to have been deemed aliens in England, though under the rule of the same sovereign. Report from Lords' Committee, 1823-4, on the Dignity of a Peer.

³ 4 Rot. Parl. 387.

⁴ 7 James I. c. 2.

⁵ 6 Geo. IV. c. 67.

tion of these statements, letters of recommendation were usual from persons of position able to testify to his orderly life and conduct. These letters, with the petition, were then communicated to the Alien Office, which for many years kept note of the proceedings of foreigners in this country. If the report from the Alien Office were satisfactory, the Home Secretary signed a certificate to this effect, without the production of which no Naturalization Bill could be read a second time.¹ This was by no means all. In compliance with the Act of 1609, the petitioner for the Bill must, if of the age of eighteen or upwards, have received the sacrament within one month of the introduction of the Bill; and upon the second reading he was required to take the oaths of supremacy and allegiance before the Lord Chancellor or Speaker, according to the House in which the Bill originated. If he were under the age of eighteen, his father or guardian represented him before the Committee on the Bill; and on proof that he had been educated in the Protestant religion, he was not required to receive the sacrament or take the oaths. If over eighteen, he and his witnesses were sworn at the bar; and before the Committee on his Bill in each House he was called on to prove, among other things, the administration of the sacrament by the evidence of the parish clerk and sexton, and by a certificate from the officiating minister.

Aliens disabled from holding real property.

One of the chief reasons for naturalization was that aliens could not hold real estate. Parliament, in 1844 and 1847,² relaxed the law in their favour, and, amongst other privileges, allowed the subjects of a friendly power to hold lands for purposes of residence or business for a term not exceeding twenty-one years. These and other statutes bearing on the same subject were repealed in 1870, when the Secretary of State was authorized to grant to aliens, under certain conditions, certificates of naturalization, entitling them within the United Kingdom "to all political and other rights, powers

Certificates of naturalization.

¹ S. O., House of Lords, January 2, 1807.

² 7 & 8 Vict. c. 66; 10 & 11 Vict. c. 83.

and privileges," which a natural-born British subject possesses, with corresponding obligations.¹ Even without such certificates, aliens may now hold, dispose of, and transmit real and personal property of every description in the same manner as natural-born English subjects. Returns are usually laid before Parliament in each Session, showing the certificates issued to aliens by the Home Secretary, giving their residences and the countries to which they belonged; and showing also the names and descriptions of all aliens who have obtained Acts of Naturalization.²

Returns to
Parliament.

Owing to this liberal treatment of certificated aliens, private naturalization Acts, which used to be indispensable, are now very rare. So ample, indeed, are the concessions of 1870, that we might easily suppose nothing was left to be asked for. Certain political rights, however, appear to be still beyond the scope of a Home Office certificate. To explain these reservations, which do not appear on the face of the Act of 1870, some other public statutes must be mentioned. A reasonable jealousy, at a time when so many of our Sovereigns came to us, with their courtiers, and their courtiers' friends, from across the water, led to the special exclusion of aliens from the British Parliament and from office, even although naturalized or made denizens. An Act passed in 1700, during the reign of William III.,³ provided that "no person born out of the kingdoms of England, Scotland or Ireland, or the dominions thereof, although he be naturalized or made a denizen, except such as are born of English parents, shall be capable to be of the Privy Council or a member of either House of Parliament, or to enjoy any office or place of trust, civil or military."

Act of 1700,
excluding
aliens from
Parliament,
even after
naturaliza-
tion.

¹ 33 & 34 Vict. c. 14; and see also 33 & 34 Vict. c. 102; 35 & 36 Vict. c. 39; and 45 & 46 Vict. c. 50, s. 9. Under the Act of 1870 an alien, to be qualified for naturalization, must have resided in the United Kingdom for five years, or have served the Crown for that period, and must intend to reside in the United Kingdom

or to serve the Crown.

² Parl. Paper, 125 (Session, 1883).

³ 12 & 13 Will. III. c. 2, s. 3; one of the many signs of distrust of the King shown by Parliament. It was entitled "An Act for the further limitation of the Crown and better securing the rights and liberties of the Subject."

Disability
enforced in
private Natu-
ralization
Bills.

This statute was evaded by clauses in private Naturalization Acts, but was regarded of such importance that, in order to preserve it "entire and inviolable," Parliament provided, in 1715,¹ that in every private Bill for naturalization there should be a clause declaring that the person so naturalized should not thereby be enabled to be of the Privy Council, or a member of either House of Parliament, or to take any office or place of trust, either civil or military, or to have any grant of lands, tenements or hereditaments from the Crown, to himself, or any other person or persons in trust for him; and that no Bill of Naturalization should thereafter be received in either House of Parliament unless such clause or words were first inserted.

Certificates
of naturaliza-
tion intro-
duced in 1844,

subject to the
disability.

This statute was repealed by the Act of 1844,² which first established the system of naturalization by certificates, and gave to aliens possessing them "all the rights and capacities which a natural-born subject of the United Kingdom can enjoy or transmit." In a modified form, however, the old restriction was continued, for the Act provided that "certified aliens should not be capable of becoming of her Majesty's Privy Council, nor a member of either House of Parliament, nor of enjoying such other rights and capacities, if any, as should be specially excepted in and by the certificate to be granted" by the Secretary of State. The effect of this public enactment was to release persons applying for Naturalization Bills from the necessity of inserting the usual disabling clauses. They might, therefore, ask for the privilege of sitting in Parliament and serving on the Privy Council, notwithstanding the general law. Advantage was accordingly taken of the Act of 1844 in two or three instances by persons naturalized under special Acts, who promoted second Acts to repeal the restrictions by which they were bound.³ So much of the statute of William III. as was inconsistent with the

¹ 1 Geo. I. sess. 2, c. 4, s. 2.

² 7 & 8 Vict. c. 66.

³ 4 Geo. IV.; naturalization of H. R. Ferguson, repealed as to these restrictions by 9 & 10 Vict. c. 44.

Act of 1844 was then repealed; but as two exceptions quoted from the Act of 1700 were continued in 1844, the statute of William III. to that extent was kept alive. In 1870, however, the Act of 1844 was itself wholly repealed. It seems to follow, no mention having been made of the statute of William III., that the two exceptions still apply, and the general words used in 1870, giving to aliens naturalized by certificate "all political and other rights, powers and privileges" possessed by natural-born British subjects, are, so far, controlled by the statute of William III.¹ If this view be correct, special Acts are necessary to enable naturalized persons to sit in Parliament and act on the Privy Council; and, in fact, a few applications of this nature from time to time continue to be made.

Oaths taken by aliens upon naturalization by Bill were administered in both Houses. In 1689, when Count Schomberg and Mr. Bentinck attended at the House of Commons for this purpose, chairs were set for them within the bar, and they sat down covered; then they came uncovered to the table and took the oaths.²

Oaths on
naturalization
taken in
Parliament.

A singular Bill was rejected by the Lords in 1728. It was a Bill "for relief of Lord William Powlett, a teller of the Exchequer, in respect of a sum of money stolen out of his office." The preamble recited that Lord W. Powlett had represented to the Commons that his cash-room had been broken open and robbed, and that "your Majesty's faithful Commons, having enquired into these allegations, were satisfied that the same were true, and that it was highly reasonable that Lord William should be relieved." The Lords referred the Bill to a Committee, who reported that they found in it "several things unparliamentary and unprecedented, trenching on the rights and privileges, and

Lord W. Pow-
lett's Relief
Bill.

¹ In Chitty's Statutes (ed. of 1880), title "Alien," sect. 3 of the statute of Will. III. still appears as unre-

pealed.

² Com. Journ. April 4, 1689; 2 Hatsell, 140.

derogatory to the honour of this House." They, therefore, resolved to proceed no further with the Bill.¹

Bequest to
the nation by
Sir Joseph
Jekyll.

Another curious personal Act arose out of the bequest to the nation by Sir Joseph Jekyll, Master of the Rolls, who died in 1738, leaving a large sum to the Crown to be applied, after the death of his widow, to the use of the sinking fund.² By certain unexpected claims upon his estate, his next of kin, after Lady Jekyll's death, were reduced to want. Therefore, his Majesty's "most dutiful and loyal subjects, the Commons of Great Britain, in Parliament assembled, having taken the premises into consideration," humbly besought his most excellent Majesty that Mr. Jekyll might be permitted to sell 13,582*l.* out of the stock aforesaid for the benefit of the residuary legatees. It was accordingly so enacted in the usual form.³

Joanna Ste-
phens.

A still greater curiosity in private legislation is an Act of 1739, "for providing a proper reward to Joanna Stephens upon a proper discovery to be made by her, for the use of the public, of the medecines prepared by her for the cure of the stone."⁴

¹ Lords' Journ. April 1, 1728; 3 Hatsell, 60.

² Lord Mansfield ridiculed the bequest of his old brother judge towards liquidating the national debt, and said, "he might as well have tried to stop the Thames under the

middle arch of Westminster Bridge with his full-bottomed wig."

³ 20 Geo. II. c. 34. The terms of this bequest also rendered necessary two other Acts, 12 Geo. III., c. 53, and 14 Geo. III. c. 89.

⁴ 12 Geo. II. c. 23.

CHAPTER V.

EARLY PRECEDENTS (PERSONAL) CONTINUED:—DIVORCE BEFORE THE REFORMATION: REFORMATIO LEGUM ECCLESIASTICARUM: PARLIAMENTARY DIVORCE: MARQUIS OF NORTHAMPTON: LORD ROOS: JAMES CAMPBELL: EARL OF MACCLESFIELD: DUKE OF NORFOLK: DIVORCE OBTAINED BY WOMEN: DIVORCE ACT, 1857: MARRIAGES ANNULLED—CASES OF JOHN GOODING AND EDWARD GIBBON WAKEFIELD: SEPARATION BILLS FOR CRUELTY OF HUSBAND: LADY ANGLESEA AND COUNTESS FERRERS: DECLARATION OF ILLEGITIMACY BILLS: TOWNSHEND PEERAGE CASE: DIMINISHED NUMBER OF PERSONAL ACTS.

DIVORCE Bills have a history which must be traced from the Reformation. Before that time, though marriage was indissoluble, there was no valid ceremony if the proper Ecclesiastical Court could be satisfied that there had then been incapacity on either side, by reason of pre-contract, affinity, previous marriage, physical impotence, mental imbecility or insanity. Of these five recognized grounds, all but the two first were capable of strict proof. Pre-contract, however, and in a still greater degree affinity, gave to the canonists opportunities for much subtle reasoning. The prohibited degrees of Scripture were greatly enlarged; and it came to be held that affinity might be constituted by mere commerce between the sexes.¹ In strictness, there was no divorce,

Divorce. ✓

✗
Grounds for
invalidating
marriages
before the
Reformation.

¹ First Report of Divorce Commission, 1853, p. 2; Macqueen's Law of Divorce, 2nd ed. pp. 204-5. Thus Henry VIII. called upon the Spiritual Court for a divorce from Anne Boleyn on the ground, not of her alleged adulteries, but of her pre-contract with Northumberland, and his own alleged previous intercourse with her sister

Mary, constituting an affinity which was a bar to marriage. Again, on the death of James IV. of Scotland, his widow, Margaret Tudor, married the Earl of Angus. In 1524, by collusion with her husband, she procured a sentence of divorce *a vinculo*, upon proof of a pre-contract by him. Thereupon she married Lord Methven, but soon dismissed him by

which implied marriage ties, whereas the ground for each decision was a disability to contract, and therefore no actual union.

32 Hen. VIII.
A.D. 1540.

These ingenious expedients to supply the place of divorce made marriage so uncertain that, in the words of a statute passed in 1540, "none could be so surely knit and bounden but it should lie in either of the parties' power and arbiter, by means and compasses to prove a pre-contract, a kindred, an alliance, or a carnal knowledge, to defeat the same."¹ This statute accordingly declared all marriages to be good and indissoluble, notwithstanding pre-contracts; and the forbidden degrees were limited to those defined in Leviticus. In 1540, therefore, the permanence of marriage was maintained; and, in practice, any impeachment of the bond was made much more difficult than it had been during pre-Reformation times.²

Ecclesiastical
Commission,
1533-50.

A few years brought about a change of opinion among our early Reformers. As the old ecclesiastical code needed revision, a statute of 1533, and two subsequent Acts,³ had authorized

another suit, upon evidence that Methven was cousin, eight degrees removed, to her former husband, and that so the marriage was null, by reason of affinity, coupled with carnal knowledge. Sir Edward Coke says, there was a time in England when divorce might be had "because a husband had stood godfather to his wife's cousin."

¹ Recital to 32 Hen. VIII. c. 38; 1 Eliz. c. 1.

² The Act of 1540 recites the evils arising from frequent dispensations given for marriage between cousins and other kindred by the Roman Courts, "and all because they would get money by it, and keep a reputation to their usurped jurisdiction;" but the chief mischief set forth is the separation brought about between lawfully married persons, causing much discord between them, much debate and suit at law, with wrongful vexation and great damage

to innocent parties, many just marriages being brought in doubt and danger of undoing, and many times undone, and lawful heirs disinherited. This public Act of 1540 was one of numerous statutes repealed in 1554, by 1 & 2 Phil. & Mary, c. 8, which recites the false doctrines preached and taught since 20 Henry VIII., announces the mission of Cardinal Pole from the Pope, "to call us home again into the right way," sets forth the declaration by Lords and Commons of their sorrow for the national schism, and their offer to repeal all laws passed against the supremacy of Rome, and states that the Pope's pardon has been obtained after intercession by the King and Queen, upon condition that all such laws be repealed accordingly.

³ 25 Hen. VIII. c. 19, s. 2; 27 Hen. VIII. c. 15; 35 Hen. VIII. c. 16.

Henry VIII. to appoint Commissioners who should search and examine the canons, constitutions and ordinances, and preserve such only as were thought worthy of obedience. This work was continued in the following reign,¹ and again in that of Elizabeth. Its product was the celebrated "Reformatio Legum Ecclesiasticarum."² This code was never confirmed by the Crown, as the statutes constituting the Commission had provided, and never became law, but it has always been recognized as of great authority.³ Being no longer deemed a sacrament, marriage ceased on this account to be thought indissoluble.⁴ Divorce was, therefore, allowed by the new code, and an innocent person might marry again, in five cases: adultery, absolute desertion, protracted absence, mortal enmities, or, lastly, cruelty.⁵ But reconciliation was enjoined whenever it was possible, and separations *a mensâ et thoro* were to be abolished.

Reformatio
Legum Eccle-
siasticarum.

A case occurred in 1548, which is supposed to have been contemplated by the Articles in this code. Parr, Marquis of Northampton,⁶ procured in the Ecclesiastical Court a sentence of divorce, *a mensâ et thoro*, on the ground of his wife's adultery. Commissioners were appointed to inquire whether a divorce granted for this cause carried with it a right to marry again.⁷ There was a delay of two years before

Lord North-
ampton's
divorce.

¹ By 3 & 4 Edw. VI. c. 11, "an Act that the King's Majesty may nominate and appoint two and thirty persons to peruse and make ecclesiastical laws."

² According to Sir James Mackintosh (2 History, p. 275), it was "composed by Cranmer, and translated into Latin, with a happy imitation of the clear method and elegant brevity of the Roman jurists, by Sir John Cheke and Dr. Haddon, two of the restorers of classical literature in England." Sir John Stoddart, a well-known authority on canon law, said, in 1844, that it was drawn up by a sub-committee of eight persons out of the thirty-two nominated Commissioners, and had Edward VI.

lived, it would in all probability have been the law of England. (Evid. before Lords' Com. on Judicial Committee of Privy Council.)

³ See first Report of Divorce Commission, p. 4.

⁴ The Council of Trent, however, declared marriage to be indissoluble apart from its sacramental character.

⁵ "The *Reformatio Legum*, I must say, opens the flood-gates and lets in divorce by wholesale." Mr. Gladstone, on second reading of Divorce Bill, July 31, 1857; 147 Hansard, 846.

⁶ Brother of Catherine Parr, widow of Henry VIII.

⁷ The Commissioners, or Delegates, were Archbishop Cranmer,

Act of 1551,
declaring
Lord North-
ampton's
re-marriage
valid.

any report was made, and, meanwhile, Lord Northampton grew impatient and wedded a daughter of Lord Cobham.¹ The Commissioners found, in effect, that the bond of wedlock was broken by the very act of adultery, when judicially ascertained, and that, therefore, a second marriage was lawful. Parliament confirmed this opinion in 1551, declaring Lord Northampton's second marriage "lawful, as by the law of God indeed it was, any decretal, canon, ecclesiastical law or usage to the contrary notwithstanding."² This Act must be regarded as the earliest example of Parliamentary divorce. We are told, indeed, on high authority, that it did not divorce the parties, merely declaring that the wife's adultery, and the ecclesiastical sentence obtained by Lord Northampton, operated of themselves as a sufficient divorce to allow of a re-marriage.³ But this view conflicts with the description given to the Bill in 1551. It is entered in the Lords' Journals as a Bill "for the disannulling of the marriage between the Lord Marquis of Northampton and Lady Anne Bouchier, one of the daughters of Henry, late Earl of Essex; and for the confirming of the marriage between him and Lady Elizabeth, daughter to Sir George Broke, Lord Cobham, and for the legitimization of the children that shall be had between them."⁴ Such a description is inconsistent with a mere declaratory Bill. It is true that the Act was afterwards entitled one merely "touching the mar-

the Bishops of Durham and Rochester, Dr. Ridley, and six others.

¹ According to Bishop Burnet (2 Hist. of Reformation, pp. 90 *et seq.* and 306), Lord Northampton was put to answer before the Council, and justified his re-marriage. The Popes, he said, knew that the world would not come easily under such a yoke as indissoluble marriages, and had therefore, helped by the canonists, "invented such distinctions that it was no uneasy thing to make a marriage void among them;" and Protestants would be hardly used in

comparison with Roman Catholics if, upon adulteries, only a separation was allowed, the marriage bond continuing. By order of the Council he and his new wife were parted, she being put into the keeping of his sister, the Queen Dowager. Their cohabitation was allowed after the Commissioners had reported.

² 5 & 6 Edw. VI. It was a private Act not printed.

³ Macqueen's Practice of House of Lords, p. 469, n.

⁴ 1 Lords' Journ. 408-9; March 7 and 8, 1551.

riage"; but a repealing Act of Mary gave its true character, and Bishop Cozens afterwards quoted it as a direct precedent for Lord Roos's divorce.¹

Lord Northampton obtained the relief he sought from Parliament with startling rapidity. His Bill was introduced and read a first time on March 7, passed its second reading next day, and on the following day was read a third time, apparently without amendment, after a record of dissent by the Earl of Derby, the Bishops of Carlisle and Norwich, and Lord Stourton. On each occasion there was a full attendance, including, in person or by proxy, the two Archbishops and twenty-two Bishops.² Sent to the Commons on March 19, the Bill was returned on March 31, and became law on April 15, when Parliament was dissolved.³ In the zealous reversal of previous ecclesiastical legislation which occurred under Queen Mary, even this private statute did not escape, and its repeal, in 1553,⁴ restored the English marriage-law to its ancient basis of an indissoluble contract.

Passing of Bill.

A decision given in 1601 by the Court of Star Chamber confirmed this view of the English law. One Foljambe, having procured an ecclesiastical divorce by reason of his wife's

Foljambe's case, 1601.

¹ Shelford, in his Treatise on Divorce, regards Lord Northampton's Bill as the first instance of Parliamentary divorce (p. 373).

² 1 Lords' Journ. 408-9.

³ The laxity respecting marriage which had grown up since the Reformation may be gathered from a public Bill sent down by the Lords, in 1551, along with Lord Northampton's Bill, but not assented to by the other House, "that no man shall put away his wife, and marry again, unless he shall be lawfully divorced before some competent ecclesiastical judge." (1 Lords' Journ. 413). This Bill, we read, "communi omnium procerum assensu conclusa est, dissentiente tantummodo Episcopo Norwicen."

⁴ By 1 Mary, stat. 2, "an Acte repealing a statute made in 5 Edw.

VI. touching the approving the marriage between the Marques of Northampton and Ladye Elizabeth his wief, and for the legitimation of their children." (Not printed.) In the Rolls of Parliament this Act has the form of assent proper to public statutes. (1 Lords' Journ. ccli.) Burnet says, the Bill was much discussed in the Commons. The Journals of that House only say that there were "arguments upon the Bill." (1 Commons' Journ. 31.) Its preamble recites that the Act confirming the second marriage was procured more upon untrue surmises, and on private grounds, than for any public good and increase of virtue, and that it encouraged sensual persons to practise false allegations so that they might be separated from their wives.

adultery, married again, she being then alive, but his second marriage was held void, because the divorce could be only one *a mensâ et thoro* and not *a vinculo matrimonii*.¹ This decision re-established, even among English Protestants, the doctrine that marriage was indissoluble, while the Reformation had stopped up all loop-holes of escape by the old devices and fictions of canonical degrees and alleged pre-contracts.²

Canons of
1603.

One of the Canons of 1603, which embody and re-affirm the Ecclesiastical Constitutions of 1597, and are now a substantive part of English ecclesiastical law, enjoined the Spiritual Court, before pronouncing any sentence of divorce, to obtain from the parties a bond with "good and sufficient caution and security" that they would not, "during each other's life, contract marriage with any other person."

Effect of bond
against re-
marriage by
divorced per-
sons.

By requiring such a bond, it has been argued, the Church showed that it regarded re-marriage, after divorce, not as an adulterous connection, but merely as inexpedient;³ and such re-marriage would therefore hold good, though the penalty under the bond would be forfeited. This construction is somewhat strained.⁴ The object of the canon, probably, was to provide a practical safeguard against unions which, though against law,⁵ were growing to be not against custom, and

¹ 44 Eliz. "Separantur, sed remanent conjuges," was the principle of these decisions. For determining Foljambe's case, Archbishop Whitgift conferred at Lambeth with the most learned divines and civilians of his day, and they all agreed. (Moore, 683; 3 Salkeld, 138.)

² Divorce Commission, Report, p. 6. The Commissioners do not think the evidence supports Mr. Spence's conjecture, that in early times the Court of Chancery, under its clerical chancellors, decreed divorces *a vinculo*.

³ First Report of Divorce Commission, p. 6, citing Dr. Hammond and Bishop Cozens, together with Burnet's enumeration of the opinions of

the Fathers, collected by Cranmer, that adultery works a dissolution of marriage which justifies the injured party in marrying again.

⁴ See form of bond in Shelford on Marriage and Divorce, 364. By an ecclesiastical sentence in a cause of divorce *a mensâ*, the parties were separated only "until they shall be reconciled to each other," and the bond in its terms by no means sustains the theory that a second marriage would have been permissible but for the bond.

⁵ See an extract quoted by Mr. Gladstone in 1857 (147 Hansard, 849), from a work on ecclesiastical law written in 1596, by Dr. Francis Clarke, who, as senior proctor of

were no doubt approved by many divines in the early Reformed church.¹ According to the Lambeth decision of 1601, the old doctrine of indissolubility still remained binding upon Protestants. It is not likely that, two years afterwards, a canon would be adopted embodying an exactly opposite doctrine. Nor can another argument, drawn from the Statute of Bigamy, be held as more conclusive.

X This statute, passed in 1604,² contains an express proviso that the Act "shall not extend to any person divorced by sentence of the Ecclesiastical Court." By exempting divorced persons from the penalties of bigamy, Parliament, it is said, recognized that a second marriage, after sentence of divorce, in the first wife's lifetime, was not a bigamous marriage.³ But this seeming inconsistency vanishes if we assume, as we well may, that the statute refers, not to the separation effected by a divorce *a mensâ et thoro*, but to the complete divorce *a vinculo*, obtained by persons whose marriages had, under ecclesiastical sentence, been annulled by reason of some antecedent incapacity. Such an interpretation is more reasonable than to suppose, as we otherwise must, that Parliament deliberately made the statute law to conflict with the law ecclesiastical, after a decision so well considered and so recent as that against Foljambe. From Lord Northampton's case, it is

Statute of
Bigamy, 1604.

Doctors' Commons, where he had practised for thirty-six years, speaks with the highest authority. Dr. Clarke says, that all ecclesiastical divorces were *a mensâ et thoro* only, adding, "non licet personis in his casibus, nec propter adulterium nec propter sævitiam divortiatis aut separatis, ad secundas convolare nuptias viventibus prioribus maritis vel conjugibus, quia vinculum matrimonii semel perfecti non potest ab homine dissolvi nisi morte naturali." This is in complete accord with the Foljambe decision, given five years afterwards. Dr. Clarke adds, that persons separated by ecclesiastical sentences were expressly forbidden to form fresh unions,

and that when these second unions were entered into (he calls them adulterine marriages), the delinquents might be punished by the Ecclesiastical Courts.

¹ Archbishop Laud, when chaplain to the Earl of Devonshire, in 1605, married that nobleman to the divorced Lady Rich. He afterwards bitterly repented of this act, believing such marriages to be opposed to the Divine law, and ever after set apart the anniversary of this day as a day of penitence and humiliation.

² 1 James I. c. 11.

³ Report of Divorce Commission, p. 6.

X

clear that a divorce granted by an Ecclesiastical Court for adultery was, to say the least, of doubtful operation, and that the authority of Parliament was considered necessary for giving full effect to a second marriage, and for legitimating any children born of it.

X A similar conclusion must be drawn from the next application of this nature. It was not until the year 1670, nearly a century and a quarter after Lord Northampton's Act, that Parliament was asked to sanction a divorce, or, speaking more strictly, to affirm the validity of a second marriage after an ecclesiastical sentence of separation. The steps which preceded this legislation must, however, be indicated.

Roos Illegitimacy Bill,
1662-6.

Owing to his wife's misconduct, Lord Roos promoted, in 1662, a private Bill "for illegitimizing the child named 'Ignotus,' born of the body of the Lady Anne Roos."¹ After its first reading in the House of Lords, a motion to reject the Bill was immediately moved but negatived. Upon petition by Lady Anne, counsel was assigned to her, and evidence ordered to be taken at the bar. She was also allowed "free liberty to go in and out in safety, without molestation, for following and looking after her business" while the Bill was pending.² After one or two adjournments, there is an entry in the Journals that "the cause between John Lord Roos on the one part, and Anne Lady Roos and her son Ignotus on the other part, should have been heard this day, at the bar, by counsel and witnesses on both sides; but, in regard of the great and public affairs of the kingdom, it was put off," and an order made that the case should be heard on a day fixed after the recess.³ When that time came, however, the Bill had dropped and was not revived until 1666. Lady Anne did not then appear, and

¹ 11 Lords' Journ. 433. In the Journals, the name is in various entries printed Rosse, Ross, and Roos.

² *Ib.* pp. 434-5. The lady was a daughter of the Marquis of Dor-

chester; her husband was eldest son of the Earl of Rutland. Copies of her petition were ordered to be given to these peers.

³ *Ib.* p. 450; May 7, 1662.

an Act passed "to illegitimate her children,"¹ after counsel and witnesses had been heard and a statement made on oath by Lord Roos that since March 4, 1659, and several months before, he had not cohabited with his wife.²

Four years afterwards Lord Roos promoted a Bill "for John Mannors (*sic*), called Lord Roos, to marry again, living his wife, from whom he is divorced." There was great opposition in the House of Lords. Even on its introduction, the first reading was twice adjourned after long debates.³ On a day appointed, Lady Anne was called to the bar, where "she did own and allow" a petition presented in her name. "After this," we are told, "the House fell into further consideration of the Bill"; and, for freer debate thereupon, "was adjourned into a Committee during pleasure." When the House resumed, the second reading was carried, but a protest was recorded by no fewer than thirty-five peers and prelates.⁴ Heading the dissentients was the Duke of York.⁵ Both archbishops, ten bishops, with several Catholic noblemen, also protested. A Committee of forty peers, including two bishops, was afterwards appointed to consider the Bill. It was zealously advocated by Charles II., who was present when the Committee brought up their report.⁶ They stated that, being asked

Roos Marriage Bill,
1670.

Charles II.
present at de-
bates on Bill.

¹ 18 Car. II.

² 12 Lords' Journ. p. 71. In 1667, Lady Anne petitioned for a maintenance, and there is a curious order by the peers "that the Lord Chamberlain of His Majesty's household, the Earl of Dorset, and Lord Ashley be desired to speak with Lord Roos" on this subject, "and to give this House an account of what his Lordship shall resolve thereupon."

³ 12 Lords' Journ. 301-5; March 5 and 10, 1670.

⁴ Ib. p. 311; March 17, 1670.

⁵ Before he became king, the Duke of York took a somewhat active part

in the proceedings of the House of Lords. Thus, besides the protest recorded above, he was at this period chairman of a Committee on a Bill "for taking away the benefit of clergy from those that steal cloth from the racks, and steal the King's ammunition and stores." (12 Lords' Journ. 313.)

⁶ This was on March 24. Three days previously, when the House was in Committee on a Bill to prevent and suppress seditious conventicles, the Journals record that Charles II. "came unexpectedly," whereupon the House resumed. His Majesty said "that he was come to

"what she said to the scandals laid on the Countess of Rutland" ¹ in her petition, Lady Anne Roos answered that she hoped her petition was no scandal if she could prove it, and prayed she might have counsel to speak for her. She was directed to withdraw, but the Committee afterwards recalled her, that she might be heard by counsel. Learning that she was gone, they agreed to report the Bill, omitting, however, from its title the words, "living his wife, from whom he is divorced." ²

Discussion in
both Houses.

Four days afterwards, when his Majesty again attended,³ the Bill was read a third time, "after long debate and full consideration." On this occasion twenty-nine peers and prelates "entered their dissents by subscribing their names."⁴ There is no record in the Journals of either debate or division. From contemporary writers, however, we learn that all the Roman Catholic peers, together with seventeen bishops, opposed the measure. Three bishops, Cozens, Reynolds and Wilkins, voted in its favour, and Bishop Cozens made several speeches, with learned arguments, to prove that adultery worked a dissolution of marriage, and that a separation pronounced by

renew a custom of his predecessors, long discontinued, to be present at debates (*ante*, p. 313), but not to interrupt the freedom thereof; and therefore desired the Lords to sit down, and put on their hats, and proceed in their business." So the Lords took their places, put on their hats, and again went into Committee. (12 Lords' Journ. 318.) Next day, and subsequently during the Session, the King again attended; and it is significant that, just before the Committee presented their report on Lord Roos's Bill, the peers passed a resolution humbly thanking his Majesty "for his gracious presence in this House, lately renewed.

¹ Mother-in-law of Lady Anne.

² 12 Lords' Journ. 323.

³ Ralph and other writers of the

period suggest that Charles II., who was then on ill terms with his brother, the Duke of York, and wished, if possible, to exclude him from the throne, supported Lord Roos's Bill, in order to establish a precedent for similar proceedings against the Queen, though upon another ground, barrenness. "I know no reason," the King is reported as saying, "why a woman should not be as well divorced for barrenness as a man for impotency." Apart, however, from any such motive, the King was highly entertained with the debates on this Bill, and accounted for his regular attendance by declaring that it was "better than going to a play."

⁴ 12 Lords' Journ. 328-9.

proper ecclesiastical authority from bed and board itself unloosed the bond.¹ On the first reading the debate lasted till ten o'clock at night, an unusually protracted sitting, for both Houses then usually met at ten a.m., and sometimes earlier. The second reading was only carried by proxies. Forty-two peers voted against it, with six proxies; forty-one were in its favour, with fifteen proxies.² No time was lost in the Lower House, which read the Bill a first time on March 29, the day after it came down, gave it a second reading and ordered its committal next day, not, however, without a division,³ considered it in Committee of the whole House, *ante meridiem*, on the day following, and, after an adjournment, passed it, *post meridiem*, unamended. There was, indeed, no time to spare, for Parliament was prorogued on April 11, when the Royal assent was given.

This celebrated Act⁴ is not to be found in any public collection of statutes. It recites that "John Manners, commonly called Lord Roos, only son and heir-apparent of John, Earl of Rutland, being formerly married to the Lady Ann Pierpoint, is, by sentence of the Ecclesiastical Court, justly divorced from her for adultery on her part; that her children, by Act of this present Parliament, have been declared illegitimate;" and that there is "no probable expectation of posterity to support the family in the male line but by the said John Manners." Upon his petition and that of the Earl

Recitals in Act.

¹ The substance of these speeches was afterwards reprinted in a pamphlet, and may be found in Macqueen's *Practice of House of Lords*, pp. 554-61. Replying to the argument that separation *a mensâ et thoro* did not dissolve the marriage tie, Bishop Cozens says:—"This is a distinction without a difference, newly invented by the canonists and schoolmen, and never heard of either in the Old or New Testament, nor in the times of the ancient Fathers, who accounted the separation from

bed and board to be a dissolution of the bond itself."

² Macqueen, p. 553.

³ 9 Commons' Journ. 150. The numbers were, yeas, 141; noes, 65. A comparison of the numbers with other divisions at this period shows how strong an interest had been aroused by the Bill.

⁴ 22 Car. II., A.D. 1670. The text is given from the House copy in the Parliament Office, in the Divorce Commissioners' First Report p. 7.



Operative
words.

of Rutland, "and others their relations, and for other weighty considerations," it is therefore enacted that it shall be lawful for Lord Roos "at any time or times hereafter to contract matrimony, and to marry as well in the lifetime of the said Lady Anne as if she were naturally dead, with any other woman or women with whom he might lawfully marry in case the said Lady Anne was not living." Such marriage, when celebrated, is to be "good, just and lawful, and so shall be adjudged, deemed and taken to all intents, constructions and purposes;" and any children are to be deemed born in lawful wedlock, legitimate and inheritable. There are other provisions, among them one that Lord Roos shall be tenant of the curtesy of the lands of any future wife, who, in like manner, shall be entitled to dower.¹

Act for vol-
ing marriage
of Mary
Wharton,
1690.

A marriage was annulled by statute in the Session of 1690. James Campbell, a brother of the Earl of Argyll, had then, in the violent fashion of the times, carried off by force Mary Wharton, a minor, and married her.² A public Bill was brought before the House of Commons in 1690 to prevent clandestine marriages;³ and the occasion was thought

¹ Bishop Burnet, treating of the Roos Bill, says: "At that time a sceptical and libertine spirit prevailed, so that some began to treat marriage only as a civil contract, in which Parliament was at full liberty to make what laws it pleased; and most of King Charles's courtiers applauded this, hoping by this doctrine that the King might be divorced from the Queen. The greater part of the bishops, apprehending the consequences that Lord Roos's Act might have, opposed every step that was made in it; though many of them were persuaded that, in the case of adultery, when it was fully proved, a second marriage might be allowed." (Vol. IV. p. 227.)

² Forcible abduction and marriage of an heiress were made felony by

3 Hen. VII. c. 2; and the offence was complete even though, after her forcible taking, the woman consented to the marriage. (Per Lord Chief Justice Holt in *Swendson's case*, 14 State Trials, p. 595.) Swendson, a Dane, was hung for this offence in the year 1702. By a sham arrest for debt, he conveyed a girl of eighteen to a tavern in Holborn and induced her, under threats, to marry him there, the ceremony being performed by a Fleet parson. By his execution, the law effectually dissolved this marriage. A female accomplice, also sentenced to death, was respited, being with child, and afterwards reprieved. (See now 24 & 25 Vict. c. 100, s. 53.)

³ It did not, however, become law; and until the passing of Lord Chan-

opportune for inserting a clause declaring and making the Campbell marriage void, with a recital that Mary Wharton, an infant, had "by force been unlawfully taken from her relations by one James Campbell, and others his adherents." This clause was negatived, for it would have been irregular to graft upon a public measure relief for a private injury. Leave, however, was immediately given to bring in a special Bill for effecting the same object.¹ While this Bill was pending, Archibald, Earl of Argyll, petitioned the House, stating that the Bill was "to his brother's prejudice and dishonour of his family," and asking that, inasmuch as the circumstances of the marriage were "very much misrepresented," the House of Commons should allow "his brother and family" to vindicate themselves by counsel and witnesses at the bar. This petition went unheeded, and on the same day the Bill was sent to the Lords.² It was there ordered to be read a second time "in a full House, all the Lords

Petition of
Archibald,
Earl of
Argyll.

cellor Hardwicke's Act in 1753, clandestine marriages were greatly more common all over England than marriages *in facie ecclesie*. "They were entered into without banns or licence; without consent of guardians; by day or by night, without regard to time; without regard to place, in a private house, or in a tavern, very often in a prison, and not rarely, when it suited the impulses of parties, in a brothel." (Macqueen's Law of Marriage, p. 2.) In the Fleet prison there was a colony of ecclesiastics, whose orders were indelible notwithstanding any delinquency or degradation, and who made large profits by celebrating clandestine marriages for fees smaller than those charged in church. One of these Fleet parsons is said to have married six thousand couples in a single year. A prosperous innkeeper would occasionally have a parson on his establishment, at a salary, to

accommodate wedding parties. The most unseemly and deplorable alliances were thus daily and nightly effected. If a man, in a moment of unguardedness or of intoxication, talked of marriage with an abandoned woman at a house of ill-fame, she straightway sent for a hedge parson, who performed the ceremony on the spot, and was ready to prove it afterwards if required. (Ib. pp. 3-4.) Young men of rank and fortune were frequently inveigled in this way; and the danger was greater to women, who stood more in need of protection. Lord Hardwicke's Act (26 Geo. II. c. 33) made the celebration of clandestine marriages a felony, punishable by transportation, and put a stop to this degradation of the sacred office.

¹ 10 Commons' Journ. 493; 2 Will. & Mary.

² Ib. p. 503; December 9, 1690.

being summoned to attend.”¹ After consideration by a Committee of forty-four peers and nine bishops, who “examined all parties on either side,” the Bill passed without amendment.²

This statute, “to annul and make void” a forced marriage, in which the essential element of consent was wanting, affords no good precedent for a dissolution by Parliament of a marriage neither void nor voidable. Such a dissolution, however, occurred in 1697-8, in the case of the notorious Countess of Macclesfield, mother of the ill-starred poet, Richard Savage. In the Spiritual Courts, Lady Macclesfield, who had herself proclaimed her adultery with Earl Rivers, succeeded in baffling her husband’s efforts to obtain a divorce *a mensâ et thoro*. He was therefore compelled to apply to Parliament without that basis for Parliamentary intervention which had been supplied by Lord Northampton and Lord Roos. The circumstances were scandalous and flagrant, but strict proof was required and given. When the bill came before the House of Lords, counsel and witnesses were heard on both sides during parts of eight days.³ These proceedings lasted from January 15 till February 24, 1697. Then, and not before, the Bill was allowed a second reading.⁴

Macclesfield
Divorce Bill,
1697.

Lady
Macclesfield’s
defence.

It was afterwards considered, at three sittings, in Committee of the whole House. Lady Macclesfield insisted upon her innocence, accounting for her child by declaring that, after their separation, her husband had been surprised into a private intrigue with her, believing her to be a stranger. She also alleged that her father-in-law had turned her out of doors, and that her husband, notwithstanding the obligation she had laid upon him by successfully petitioning James II. for his life, had, for no fault, excluded her from bed and board. She, therefore, if the Lords thought fit to pass the Bill, asked that her whole fortune under her marriage settlement should be refunded, “both because a divorce dissolves

¹ 14 Lords’ Journ. 583-5, 591.

² 2 Will. & Mary. sess. 2.

³ 16 Lords’ Journ. 195 *et seq.*

⁴ *Ib.* p. 218.

the whole frame of the marriage contract, and because it were the highest injustice that a man who was guilty of making his wife commit adultery should be rewarded out of the same wife's fortune."¹ In this contention Lady Macclesfield appears to have succeeded. During the proceedings in Committee her marriage settlement was produced, and Mr. Fitton Gerard was heard upon his petition for an alteration in it on her behalf.²

There were great debates, not recorded in the Journals, some peers representing the danger of granting divorces, whilst others, among whom was Bishop Burnet, showed that they were necessary and lawful in particular cases. On X March 3, 1697, the Bill passed, after a protest by the Marquis of Halifax and Earl of Rochester:—"Because we conceive this is the first Bill of this nature that hath passed, where there was not a divorce first obtained in the Spiritual Court; which we look upon as an ill precedent, and may be of dangerous consequence in the future."³ The House of Commons heard both parties by counsel, but passed the Bill without amendment.⁴

Protest
against pass-
ing of Bill.

This statute is remarkable as the only instance in which Parliament has dissolved an otherwise valid marriage, without requiring the injured husband first to obtain either a judgment at law or an ecclesiastical sentence. Lord Macclesfield's Divorce Bill was sanctioned on its own merits, under the high authority of Lord Somers.⁵ Another equally famous case of the same nature began at an earlier date, though legislation was much longer protracted. In December, 1691, the Duke of Norfolk petitioned the House of Lords for

Proceedings
in Parliament
relating to
Duke of Nor-
folk's divorce,
1691-1700.

¹ 5 Parl. History, p. 1173.

² Dr. Johnson, in his *Life of Savage*, says that the Countess's fortune, which was very great, was repaid her, and that after the divorce she lost no time in marrying Colonel Brett.

³ 16 Lords' Journals, 224; March 3, 1697.

⁴ 10 Will. III. Its title was "An Act for dissolving the marriage between Charles, Earl of Macclesfield, and Anne his wife, and to illegitimize the children of the said Anne."

⁵ Macqueen's Practice, p. 473.

Committee of Privileges hear counsel and judges.

a Bill to dissolve his marriage with Lady Mary Mordaunt.¹ This petition was referred to the Committee for Privileges, and was felt to be of such importance that "the Barons of their Majesties' Court of Exchequer" were ordered to attend the Committee.² After hearing counsel, and also consulting their assistants, the judges, the Committee reported through their Chairman, the Bishop of Salisbury, that there were "some doubts concerning the way of bringing this matter before the House." Thereupon the Duke of Norfolk, being present, desired leave to produce precedents before the Committee, a request which was granted.³ As the Committee were satisfied, Lord Strafford, early in January, 1692, "opened the Bill," by direction from the House, which also ordered that the Duchess should have notice, and might be heard at the bar by her counsel, to "object to the receiving of the Bill," the Duke's counsel being likewise heard in its favour.⁴ Counsel on both sides accordingly addressed a full House,⁵ on January 12, when, after long debate, it was resolved to receive the Bill. Four bishops, however, and fourteen peers protested on grounds not stated in the Journals.⁶

Bill received, 1692.

The Duke directed to bring in his charge.

Unusual precautions were taken upon subsequent stages of the Bill to secure full consideration of its objects and provisions. Before the second reading, three civilians, Sir Richard Raynes, Sir Charles Hedges, and Dr. Oxenden, were summoned to attend. After hearing them, the Duke was directed to "bring in the charge against his Duchess, and particularly as to person, time, and place."⁷ A copy was delivered to Sir Thomas Pinfold, who appeared for the Duchess. She

¹ 14 Lords' Journ. 672. The object of the petition is not stated; a discreet silence is maintained until after several entries respecting it.

² Ib. p. 676; December 7, 1691; 3 Will. & Mary.

³ Ib. p. 684.

⁴ 15 Lords' Journ. 21; January 8, 1692.

⁵ The two archbishops were present, with twelve bishops, and seventy-eight lay peers.

⁶ 15 Lords' Journ. 24.

⁷ Mr. (afterwards Sir) John Germaine was the alleged adulterer. The charge is given in 15 Lords' Journ. 37.

replied that the charge was too general, especially as the crime imputed to her was said to have begun in 1685, "during most of which time, at the advice and by the approbation of the Duke, she was and continued beyond the seas, to ease him in his charge and port; he frequently declaring that, when he should be more easy in his fortune, they should live together." Upon this answer, and after addresses by counsel, and debate, their Lordships agreed that the Duke's charge was defective. It was therefore amended, and the Duchess was only allowed two days to prepare her answer, though she complained that it was impossible to instruct counsel upon such short notice. On January 21, the Duchess, attending by order of the House, was allowed to "come to the table and have a chair set for her." Before she was admitted, there was a curious debate "how the Speaker should demean himself when he spake to her." A motion that he should "stand up with his hat off," was negatived, and a general rule was made "that for the future, when the Speaker shall speak to any Lord or other person, he shall speak to him sitting, with his hat on."¹

In her answer (all, she said, she could prepare in so short a time) the Duchess strongly protested her innocence, alleging that these proceedings were taken because she refused to join in the sale of certain estates, to relieve her husband from money difficulties. She had been married for fifteen years, and, until this pretended charge was made, had always been treated with kindness and respect. At the Duke's request and desire she went with him to France in 1685, and during his illness there, he would take no food or medicines but such as came from her hands. On his recovery, he said that his occasions called him to England. "At his parting he showed great affection to me, and, in great passion of love, with tears in his eyes, said he had ten thousand pardons to ask me; desiring my patience, and that I should return to England

Duchess's
answer to
charge.

¹ 15 Lords' Journ. 41.

with him in some short time. . . . After his arrival in England, he made several visits to my mother, the Countess of Peterborough, and, with great observance and respect, asked her blessing ; telling her that he had left me safe and well in France ; that his own debts were pressing upon him ; and if I would consent that the manor of Drayton and other estates should be settled upon him and his heirs, he should thereby be made a happy man." When she came to England she had to sue him for alimony, as he was unable to support the charge of housekeeping. He did not then impute any crime to her, "which had been proper for him to have done to avoid any alimony, had I been guilty." She had afterwards refused, on his application, to join in the sale of Castlerising and other estates, which was "the true cause and occasion" of this proceeding against her honour. According to established law, no husband could obtain a divorce for his wife's adultery if he were similarly guilty ; and this guilt she was ready to prove. Their Lordships, she complained, were "creating new ways of proceeding" against her, and "a new law to punish" her. Finally, she reminded them that she was "not only the Duke of Norfolk's wife, but also born and descended from the ancient nobility ; and that their Lordships' ancestors and hers, who sat together in this House, knew no such proceeding."¹

Evidence.

On January 23, the Duke's witnesses were produced. A curious method of procedure was followed. The Duchess's proctor handed in a protest, as was usual in the spiritual courts, requiring that each witness, before being sworn, should declare his name, calling, place of abode and how long he or she had lived there ; and that copies of their written answers to these questions should be furnished for the defence. This protest was allowed, and twenty-four witnesses were so examined, not upon oath, doubtless in order that their character and credibility might first be tested. When these witnesses were afterwards sworn, the Duchess's proctor

¹ In 15 Lords' Journ. 42, the Duchess's answer is given in full.

asked that he might administer interrogatories, and that each witness should be examined separately, secretly and apart, in writing, according to use and practice in the Ecclesiastical Courts (*omnes testes in dicta causa examinandi, secundum usum et praxim in curiis ecclesiasticis usitatam, separatim, secrete, et sigillatim, in scriptis examinentur*). Upon hearing this protest, the House simply ordered that the proctor should have a copy of any evidence given by the Duke's witnesses, and that all parties should attend at the bar three days later. At the appointed time, the Duchess's proctor prayed that the Duke's counsel might not be present when witnesses were examined; but this prayer was not allowed, their Lordships declaring that no prejudice should thereby arise to the Duchess.

Evidence in support of the main charge was taken on January 26, and the Duchess was required to open her defence three days afterwards. An appeal for further time only obtained a postponement till February 1. Witnesses were then heard as well as on three subsequent days. On February 12, the evidence was summed up by one counsel and a civilian upon each side. How keen an interest was felt in the cause is shown by an order that on February 16, at noon, the House "shall proceed in the debate of this business; no other business whatsoever shall then intervene; all the Lords in and about the town shall be summoned to attend; and the officers shall give the House an account of what Lords they summon."¹ On the day fixed, after some discussion, the House was "put into a Committee for the more freedom of debate." On resuming, some time was spent in considering whether proxies should be allowed. It was at length resolved in the negative, but a protest was offered by the Duke of Bolton and seventeen other peers, "because it is an inherent right of the peers of England to be summoned to Parliament, and when they cannot

Final hearing
at bar.

Use of proxies
disallowed.

¹ 15 Lords' Journ. 73.

Bill rejected.

attend in person, to be represented by their proxies; and no vote of the House of Lords alone can take away that right, which is established by the fundamental laws of our constitution.”¹ On February 17, the depositions of all the witnesses were read by the clerk, and after fresh debate the second reading of the Bill was negatived.²

Words of heat
used by Lord
Lincoln.

Though the Journals record no speeches, or even the names of those who spoke, the debate must have been somewhat stormy. Words of heat were used by the Earl of Lincoln to the Earl of Rochester. In answering some remarks made by Lord Lincoln upon this Divorce Bill, Lord Rochester said, “that noble lord takes great liberty with the House,” to which Lord Lincoln replied, “I do not take so much liberty with the House as you do with the nation.” These words were taken down. Judged by modern standards of parliamentary recrimination, they appear inoffensive enough. Two hundred years ago, however, a different standard prevailed. Lord Lincoln “was heard to explain himself,” and then withdrew. Meanwhile, the House considered what should be done, and having ordered him to come to the bar, the Speaker,³ by

Lord Lincoln
rebuked by
order of the
House.

¹ 15 Lords' Journ. 78.

² *Ib.* p. 81; February 17, 1692. There were no doubt divisions at this and other stages of the Bill, but none are recorded in the Journals. Burnet says of these proceedings:—“As the lady was a Papist, and a busy Jacobite, so a great party appeared for her. All that favoured the Jacobites, and those who were thought engaged in lewd practices, espoused her concern with a zeal that did them little honour. Their number was such that no progress could be made in the Bill, though the proofs were but too full and too plain. But the main question was whether, supposing the matter fully proved, the Duke of Norfolk should be allowed a second marriage. The bishops were desired to deliver their opinions, with their

reasons. All those who had been made during the present reign held that a second marriage in that case was lawful, and conformable both to the words of the Gospel and to the doctrine of the primitive Church; but all the bishops made by the two former Kings were of another opinion. . . . Here was a colour for men who looked at things superficially, to observe that there was a difference of opinion between the last-made bishops and those of an older standing; from which they inferred that we were departing from the received doctrine of our Church; and upon that topic the Earl of Rochester charged us very vehemently.” (IV. p. 227.)

³ “Orator procerum,” as he is otherwise described in the Journals.

direction of the House, administered to him this grave rebuke :—

“ Your lordship ought to kneel, but in respect to your unwieldiness, their lordships are pleased to dispense with that part of your submission. I am commanded to tell your lordship that, for your contempt to this House, you are to ask the pardon of this House, and of the lord of whom you spake these words. And I am further commanded to let you know that the lords have observed that you are apt to take too great a liberty in your discourses in this House, contrary to the order thereof, which the lords expect that for the future you will take care to avoid.”

After receiving this reprimand, Lord Lincoln “ asked the pardon of the House, and of the Earl of Rochester in particular.” Then the debate proceeded.¹

Objection had been taken that the Bill was not founded upon any ecclesiastical sentence. An answer prepared on the Duke’s behalf shows that, at the time of these proceedings, no one pretended to find in such a sentence alone valid ground for a second marriage. “ A sentence in the Ecclesiastical Court can give the Duke no relief as to what he seeks by his Bill, viz., to dissolve his marriage, and enable him to marry again ; but that relief must spring originally from Parliament without relation to the Ecclesiastical Court. If there were such a sentence, yet it would afford no assistance in this case ; for Parliament, in cases of this nature, does not rely upon any such sentence for a satisfactory proof of the fact, but hears witnesses *virâ voce*, and thereupon proceeds.”² The Wharton precedent was also cited as having originated in Parliament.³ Another reason for rejecting the Bill was that the Duke had obtained no verdict at common law. In order,

Reasons
against Bill
of 1692.

At this period the Speaker was not always a peer. Sir Robert Atkins, Chief Baron of the Exchequer, acted as Speaker during the Sessions 1691–3, when he was succeeded (May 2, 1693) by Sir John Somers, Lord Keeper of the Great Seal.

¹ 15 Lords’ Journ. 81 ; February 17, 1692.

² See Reasons for passing the Bill, 5 Parl. Hist.

³ Ante, pp. 398–9. But this was a Bill to declare a marriage void, not to dissolve it.

Action for
crim. con.

therefore, to pave the way for fresh proceedings in Parliament, he brought an action for crim. con. against Mr. Germaine, laying his damages at £100,000. In November, 1692, the case was tried at Westminster before Lord Chief Justice Holt; Sir John Somers, then Attorney-General, leading for the prosecution. After the summing-up, which closed a one day's trial, the jury were allowed to postpone their verdict till next morning. They then found for the plaintiff, with a hundred marks¹ damages, and costs, "upon which they had a severe reprimand from the Court for giving so small and scandalous a fine."²

Attempted
revival of
Bill, 1692-3.

During the following Session, in December, 1692, the Duke of Norfolk renewed his efforts for a divorce. By order of the House of Lords the record of judgment entered for him in the Court of King's Bench was brought up and read. Lord Chief Justice Holt, attending by direction, was asked "whether the Duchess was concerned in the action as a party," to which he answered, "she was neither plaintiff nor defendant; the action was between the Duke of Norfolk and Mr. Germaine." After debate, the Duke's counsel were called in and asked "whether the Duchess was ever sent to, to waive her privilege." On their reply in the negative, the Duchess's counsel were asked "whether if the Duchess had been desired to waive her privilege she would have done so." They said she would; and then, after further debate, their Lordships refused to receive the Bill, apparently on the ground that the action at law did not affect the Duchess, and that, as she would have waived her privilege, she might have been cited in a spiritual court, so that the position as

¹ 66*l.* 13*s.* 4*d.* A mark was 13*s.* 4*d.* Hence the lawyer's initial fee (half a mark) of 6*s.* 8*d.*

² 12 Howell's State Trials, 947. Kennet says, "the slightness of satisfaction was almost as great a reproach as the crime itself." The jury were probably influenced by

the Duke's well-known profligacy, and a belief that his treatment of the Duchess had conduced to her adultery. She had previously sued him for alimony, and in January, 1688, obtained an order for 1,500*l.* a year for her maintenance. 11 State Trials, 1144-5.

far as she was concerned was unchanged since the former Bill was rejected.¹

In January, 1696, the record of the trial in the King's Bench was again ordered to be brought to the House of Lords,² but no proceedings followed until February, 1700, when the Duke once more asked Parliament to dissolve his marriage, "he having certain proof of his wife's living in adultery with Sir John Germaine."³ The course of procedure on this occasion may be noted. After debate the Bill was read a first time. Counsel were also heard for and against it at this stage, and their Lordships resolved only to hear witnesses, with a few special exceptions,⁴ upon matters of fact which had occurred since the first Bill was pending.⁵ The examination of witnesses was protracted till March 8, when all depositions were read by the clerk in the presence of counsel, who then summed up the evidence, the Duke's counsel being allowed a right of reply. It was resolved that proxies should not be used upon any division; and, "after long debate upon the evidence and subject-matter," the Bill was read a second time.

Fresh proceedings in Parliament, 1696-1700.

Evidence.

Proxies.

Six bishops and thirteen lay peers recorded a protest:—
 "1. Because we conceive there was contradiction in the evidence given at the bar, which made the validity of it suspected. 2. Because it is without precedent that a Bill of this nature was ever brought into Parliament where the subject-matter had not first been proceeded on in any ecclesi-

Protest against second reading of Bill.

¹ 15 Lords' Journ. 170; January 2, 1693. Lord Dartmouth, in a note to Burnet's History, says:—"The Earl of Peterborough (the Duchess's father) and all her relations, opposed the Bill with great zeal and warmth; and though nobody pretended to justify her conduct, there were many reasons for alleviating the rigour of the punishment, the Duke being notoriously a very vicious man, and

besides his own ill example, had been the original introducer of all the bad company she kept."

² 16 Lords' Journ. 57.

³ Ib. p. 517; February 15, 1700.

⁴ These were witnesses who had been prevented by the Duchess or Sir John Germaine from attending during the former enquiry.

⁵ 16 Lords' Journ. 521.

Provision for
Duchess.

astical court; and it may be of dangerous consequence to the settlements of families to subject dissolutions of marriages to so short and summary a way of proceeding."¹ There is little doubt that the Duke's conduct as a husband would, according to modern practice, have barred his remedy either in the Ecclesiastical Courts or in Parliament; but the proofs of the Duchess's adultery were complete.² After the second reading, the Bill was referred to a Committee of the whole House, before which the Duchess was heard by counsel upon her petition "touching her claims and interests," under her jointure and marriage settlement. A clause was accordingly inserted that she should receive £10,000 in lieu of all claims.

Proceedings
in Commons.

On March 12 the Bill was read a third time and passed, with renewed protests from sixteen bishops and peers. In the Commons, the Duchess at once petitioned, complaining that there had not been a legal trial in any Ecclesiastical Court, to which by law she was entitled, and also that the proceedings in the other House "were so very quick." It was agreed that the parties should be heard by counsel and witnesses at the bar, and Sir John Germaine was summoned to attend. Afterwards the Bill was considered in Committee of the whole House, which heard counsel for and against it, but reported that the Duchess's counsel "did not think fit to produce any evidence against it." Several amendments were proposed but negatived,³ and the Bill was returned to the Lords as it had left that House. It received the Royal assent on April 11,⁴ and the Duchess married Sir John Germaine soon afterwards.

Norfolk
Divorce Act,
1700.

This Act, which has served as the model of subsequent Divorce Bills, is entitled, "An Act to dissolve the Marriage of Henry, Duke of Norfolk, Earl Marshal of England, with the Lady Mary Mordaunt, and to enable the said Duke to marry again." It recites that the Duke, having been married

¹ 16 Lords' Journ. 540.

² Macqueen's Practice of House of Lords, 572.

³ 13 Commons' Journ. 303; March 27, 1700.

⁴ 11 & 12 Will. III. c. 2.

to Lady Mary, has "made full proof" of her adultery; and forasmuch as he "hath no issue, nor can have any probable expectation of posterity to succeed him in his honours, dignities, and estate, unless the said marriage be declared void by authority of Parliament," and he "be enabled to marry any other woman," therefore the King and Queen, upon the Duke's petition, with the authority of Parliament, declare the marriage null and void,¹ and enact that he may marry any other woman in Lady Mary's lifetime, "as if she were naturally dead." All children born of any second marriage are to be deemed legitimate and inheritable. Lady Mary is barred from dower; all jointures and conveyances for her benefit, as to the Duke's lands, are set aside, together with any limitations made for the Duke's benefit by Lady Mary's ancestors.

It has been suggested that the chief reason why the first Divorce Bills were granted was to continue the succession to peerages in the male line.² Recitals to this effect were contained in the Northampton and Roos, as well as in the Norfolk Acts. Lord Macclesfield, in petitioning the House of Lords for his Divorce Bill, put forward the same ground, alleging that he would suffer unreasonable hardship if, for his wife's fault, he were deprived of the common privilege of every freeman "to have an heir of his own body to inherit what he possessed, either of honour or of estate, or that his only brother should lose his claim to both, and his birthright be sacrificed to Lady Macclesfield's irregular life."³

Divorce first granted to prevent titled families from extinction.

If, however, the earliest divorces were really granted on this ground, it was soon abandoned. After the precedent set in the year 1700, Parliament had no hesitation in ex-

¹ These words have not here their common meaning—that the marriage was void *ab initio*. Such words seem often, in fact, to have been loosely used, really importing a dissolution, not a voidance of the marriage.

² First Report of Divorce Commission, 1853, p. 9.

³ 5 Parl. History, p. 1173. At this time Lady Macclesfield was living with Earl Rivers, and had borne him two children.

Box and
Dillon Di-
vorce Acts,
1701.

exercising the same jurisdiction in favour of persons who could allege no such reasons. In the very next Session two Acts for divorce were obtained by Mr. Box and Sir John Dillon. Mr. Box was "a citizen and grocer of London," and his allegation merely was that his wife had "lived in adultery, as he hath fully proved in the Court of King's Bench, and obtained a definitive sentence in the Arches Court of Canterbury."¹ Upon this allegation he obtained his divorce.

An Irish knight, Sir John Dillon, of Lesmullen, alleged that in 1694 he married Mary Boyle, settling upon her a jointure of 500*l.* a year; that there were two daughters of the marriage; that she "thought fit, without provocation, to elope from him" in October, 1695, and had not returned; and that she had since lived in open adultery, and in August, 1699, was delivered of a child. He therefore prayed leave to bring in a Bill for dissolving and making void the marriage, bastardizing all her issue since her elopement, and discharging his estate from her jointure and all her debts and demands.² Both these Divorce Bills passed.³

Statutory
provision for
divorced
wives.

In the earliest cases, as we have seen, Parliament provided by express enactment that the wife should not be left destitute.⁴ Mrs. Box, in 1701, following more illustrious examples, petitioned for a permanent maintenance from her husband. She asked for £3,000, but was only awarded £100 a year for life. Lady Dillon, in the same Session, did not oppose the Bill, but was heard by counsel on her petition for a com-

¹ 16 Lords' Journ. 602; February 19, 1701.

² 16 Lords' Journ. 634; March 25, 1701.

X ³ 13 Will. III. The difference in the two titles is worth noticing:
X c. 17 is "an Act for dissolving the Marriage of Sir John Dillon with Mary Boyle, and for other purposes therein mentioned"; c. 18, "an Act to dissolve the Marriage of Ralph

Box with Elizabeth Eyre, and to enable him to marry again." The wording of the latter title was followed in subsequent statutes.

⁴ On the other hand, in some Divorce Acts, as in that obtained by Lord Macclesfield in 1697, there was a clause (drawn in that case by the judges) indemnifying the husband against the wife's debts. (16 Lords' Journ. 222.)

petent maintenance, and the House of Lords required Sir John Dillon to pay her counsel's fees.¹ In Viscount Bolingbroke's case, which was before Parliament in 1768, his wife had, under settlement, £500 a year to her separate use and £2,000 a year jointure. Lady Diana agreed to give up both these provisions in consideration of £800 a year for her life, which Lord Bolingbroke secured to her, "free from all deductions."² So, in the following Session, the Duchess of Grafton received £2,000 a year in lieu of a jointure of £3,000 a year. In an Act obtained in 1794 by Mr. Bernard Edward Howard, there was a clause reciting that "it is necessary that some provision should be made" for his divorced wife, Lady Elizabeth Bellasis, and a sum of £7,000 was invested for her benefit. In these and other cases,³ the wife had generally brought some fortune to her husband on their marriage.

Late in the last century, however, at Lord Thurlow's instance, high authorities in the Upper House pronounced against this system of securing to adulteresses incomes contributed by their husbands. "Such a principle," said Lord Thurlow, "is an encouragement to immorality and a gross injustice. It enables the woman who has injured her husband to carry part of that husband's fortune into the arms of her paramour, which is both an incitement to the crime and a reward for it."⁴ But the Lower House took a

Change of
practice by
House of
Lords.

¹ 16 Lords' Journ. 647.

² Two days after her divorce, Lady Diana married Dr. Johnson's friend, Topham Beauclerk.

³ They will be found collected in Macqueen on Divorce, p. 122 *et seq.*

⁴ Woodfall's Debates, quoted in Macqueen on Divorce, p. 146. But there were cases in which the House of Lords felt that injustice would be done if, the marriage settlement being torn up, a wife was deprived of all interest in the fortune she had brought into settlement. In 1829,

they expressed an opinion that, as the wife had brought 45,000*l.* to her husband, he ought to make some provision for her support. Counsel for the husband replied that, while he would do all that a gentleman ought to do, he felt indisposed to support her in adultery. Thereupon the Bill was postponed, but, an arrangement being made, was afterwards passed. (Tyrrell's Divorce Bill, Macqueen's Practice of House of Lords, p. 644.)

"The Ladies'
Friend" in
House of
Commons.

different view, adhering to the old practice, and requiring a husband, if he were in easy circumstances, not to drive his wife into crime by leaving her without means. This view was enforced privately but effectively. In the House of Commons there was a functionary called "The Ladies' Friend," an office generally filled by some member interested in the private business of Parliament, who undertook to see that any husband petitioning for a divorce made suitable provision for his wife.¹

Bond taken
from husband.

No clause to this effect was inserted in the Bill lest it should be rejected in the other House, but, as a condition of obtaining relief, a husband was made to understand that, before the Bill passed through Committee, he must enter into a bond securing some moderate income to his wife. In 1811, the Commons, neglecting the precaution just mentioned, inserted two clauses in a Divorce Bill, one annulling the marriage settlement, the other requiring the husband to allow his wife 400*l.* a year for life. When the Bill came back to the House of Lords, the petitioner strongly opposed these clauses, representing that his wife was then living in adultery, and that the grant of an annual income under such circumstances would be a premium to wives to commit adultery, and would tend to loosen the bonds of all conjugal fidelity. Convinced by these arguments, the Lords rejected the Commons' amendments, and the Bill was abandoned.²

First Divorce
Act obtained
by wife, A.D.
1801.

According to the general practice of Parliament, divorce was granted only at the husband's suit. To this rule, in the course of a jurisdiction exercised without question for nearly two hundred years, there were only four exceptions, and those of comparatively recent date. The first occurred in 1801. It was a flagrant case, but the wife's Bill would have been rejected had not Lord Thurlow supported it with his high authority. The facts were these:—Mr. Addison had maintained

¹ Divorce Commission, First Report, p. 11; Macqueen on Divorce, p. 213.

² Loveden's Divorce Bill, 1811, 48 Lords' Journ. 448-50.

a criminal intercourse with his wife's sister, a married woman. Her husband, Dr. Campbell, obtained a verdict against him with 5,000*l.* damages. Mrs. Addison, after obtaining in the Ecclesiastical Court a divorce *a mensâ et thoro*, applied to Parliament for a divorce *a vinculo*. Her husband did not appear. Lord Thurlow, after a long absence from Parliament, made a powerful speech for the Bill. Every principle of justice, he said, would be violated by its rejection. But Lord Thurlow did not assert a woman's general right to the same legislative relief as was given to an injured husband. He founded his chief defence of the Bill upon the old doctrine of the canonists, that commerce between the sexes creates affinity.¹ In this case, he argued, if Mr. Addison had previously had illicit intercourse with her sister, he could not have married his present wife, because such marriage would have been tainted with incest, and might have been pronounced void by an Ecclesiastical Court. A like result occurred by reason of this incestuous adultery. It made reconciliation legally impossible, for, by the affinity it had created, renewed cohabitation between Mr. and Mrs. Addison would become incestuous. Thus the end and object of marriage were defeated.²

Addison's and
Campbell's
Divorce Acts.

Arguments of
Lord Thurlow.

This revival of refinements in use among the "subtilissimi doctores" prevailed with Lord Eldon, then Lord Chancellor. He had come down to the House, taking his stand on precedent, and prepared, therefore, to disregard the wife's claim to be released from so hateful a union. He now confessed he

Lord Eldon
and Lord
Lough-
borough.

¹ *Ante*, pp. 387-8, and note.

² 43 Lords' Journ. 201; Woodfall's Debates, May 20, 1801. Lord Campbell, in his *Life of Thurlow*, thus describes the scene, at which he was present:—"All eyes were impatiently looking for the ex-Lord Chancellor, who had successively occupied the woolsack under Lord North, Lord Rockingham, Lord Shelburne, and Mr. Pitt. At last there walked in, supported by a

staff, a figure bent with age, dressed in an old-fashioned grey coat, with breeches and gaiters of the same stuff; a brown scratch wig; tremendous white, bushy eyebrows; eyes still sparkling with intelligence; dreadful 'crows' feet' around them; very deep lines in his countenance; and shrivelled complexion of a sallow hue. The fall of a feather might have been heard in the House while he spoke."

was converted by the argument that a reconciliation, which Ecclesiastical Courts always kept in view in granting separations *a mensâ*, would here be illegal. He therefore gave way to "the greater wisdom and experience" of his noble and learned friend, as "he was now satisfied that the divorcee here asked for, from its special circumstances, was distinguished from any other application which was likely to be made by a wife, and that the Bill might therefore pass without forming a dangerous precedent." Another ex-Lord Chancellor, Lord Loughborough, also admitted that his objections to the Bill were in a great measure removed by Lord Thurlow's speech. On the other hand, the Duke of Clarence opposed the Bill solely because of the petitioner's sex. In the Commons there is no record of opposition: the Bill passed with some verbal amendments,¹ and in due course obtained the Royal assent.²

Mrs. Teush's
Bill.

Encouraged by this decision, Mrs. Teush, four years afterwards, promoted a Bill to dissolve her marriage. Her conduct had been forbearing and exemplary, while her husband had been guilty of shameful profligacy. In Doctors' Commons she had obtained a decree and award of alimony, and hoped now to obtain a complete divorce. Her Bill, however, was opposed by the Bishop of St. Asaph (Dr. Horsley). He admitted that it was a case of the grossest infidelity: no sudden impulse of passion, but a deliberate abandonment of an amiable and deserving wife. But he distinguished the case from that of Mrs. Addison, "who would herself have been guilty of incest had she returned to her husband;" and, however hard the general rule might be in its particular application, he thought that on public grounds this Bill should

¹ 56 Commons' Journ. 572.

² 41 Geo. III. c. 102. Its title, expressive of its exceptional character, was "An Act to dissolve the marriage of Jane Campbell with Edward Addison, her now husband, on account of his incestuous adultery

with the sister of the said Jane Campbell, and to enable the said Jane Campbell to marry again, and for other purposes therein mentioned." In the same Session, and upon the same evidence, a divorce was obtained by the sister's husband (c. 119).

be rejected. Lord Eldon agreed with the bishop. He "never recollected a more favourable representation given of any woman," yet, on general grounds of public morality, it was his painful duty to deny her relief.

On a division the Bill was negatived accordingly, but only by the narrow majority of three.¹ Mrs. Teush persevered, but unsuccessfully, in two following Sessions.² In 1832 a Bill promoted by Mrs. Moffatt, under circumstances of great aggravation, was supported by Lord Eldon, who is reported to have said, "he had yet to learn that a woman had not as good a right to relief as a man under the circumstances which gave rise to Bills of this description."³ Here was an entire change of opinion. Lord Brougham, then Lord Chancellor, opposed the Bill on the old grounds; not denying that in exceptional cases a wife might be entitled to relief, but declaring that such cases must be "extraordinary in their enormity." On a division the divorce was refused by a majority of seven.⁴

Lord Eldon's
reported
opinion in
1832.

An Act was, however, obtained in 1830-31, by Mrs. Turton, on grounds similar to those in Mrs. Addison's case. In 1840 Parliament went a step further and granted divorce to a wife whose husband had been guilty of adultery and cruelty, and afterwards committed bigamy, for which he was sentenced to seven years' transportation. As proceedings in Parliament were begun while he was undergoing this sentence, notice, by leave of the House of Lords, was served upon the solicitor who had defended him in the Central Criminal Court.⁵ In a fourth case, which occurred in 1850, a divorce

Wife's Di-
vorce Acts,
1830-54.

¹ 45 Lords' Journ. 320; June 17, 1805, and Parl. Debates.

² 45 Lords' Journals, 595, 655; 46 Ib. 82; February 26, 1807. She then petitioned the House of Lords in her maiden name of Elizabeth Utterton. Macqueen (p. 604) says that the remedy refused by Parliament was afterwards granted to her by the Commissaries at Edin-

burgh. Her husband having proceeded to Scotland, where he lived in adultery, Mrs. Teush resorted to the Scottish jurisdiction, and obtained a divorce *a vinculo*.

³ Macqueen's Practice of House of Lords, p. 659.

⁴ Ib. p. 660.

⁵ See 3 & 4 Vict. c. 48 (not printed), "An Act to dissolve the Marriage of

was obtained by a wife on the ground of her husband's bigamy.¹ There had been no conviction, yet the Bill passed. With these four exceptions there is no instance in which Parliament granted divorce at the woman's suit. Applications made by wives on the ground of adultery alone always failed.²

Dyott Di-
vorce and
Amending
Act, 1816-17.

An Act was passed under remarkable circumstances in 1817 to amend a Divorce Act of the previous Session, obtained by Lieut.-General Dyott.³ Petitioning in her maiden name, his late wife promoted a Bill for expunging certain words, inadvertently left in the original Act, affecting the marriage settlement. Her petition was referred to two judges, the Chief Justice of the Common Pleas and Mr. Justice Burroughs, who thought it just and reasonable that the mistake should be corrected. In Committee, however, words were introduced so injurious to the petitioner's interest, that she prayed to be allowed to withdraw the Bill.⁴ On the other hand, General Dyott asked that it should proceed as altered.⁵ Deciding for the divorced husband in this dispute, the House of Lords refused to let the Bill be withdrawn, and it ultimately received the Royal assent.⁶

Description
of divorced
wife.

In this Act the wife is described by her maiden name of Eleanor Thompson. So, in the Norfolk Divorce Act, the divorced wife is called Lady Mary Mordaunt, because, when

Ann Battersby with Arthur Battersby, her now husband, and to enable her to marry again; and for other purposes therein mentioned."

¹ Mrs. Hall's case, 1850; 82 Lords' Journ. 283 *et seq.*; Macqueen on Divorce, p. 41.

² See besides Mrs. Teush's case already noticed, Bills promoted by Ann Palmer Rea in 1811 (48 Lords' Journ. 106); and Mrs. Dawson in 1848. Mr. Dawson's adultery was clear; and he also frequently flogged his wife, sometimes with a horsewhip.

She would now undoubtedly have obtained a divorce on the combined ground of adultery and cruelty, but the House of Lords rejected her Bill on six occasions, because in their opinion it would have tended to relax necessary safeguards.

³ 56 Geo. III. c. 76.

⁴ 51 Lords' Journ. 322.

⁵ *Ib.* p. 300.

⁶ 57 Geo. III. c. 64, "An Act to explain and amend" the previous statute.

the Bill passed, she ceased to be Duchess, and reverted to her original name as a daughter of Lord Peterborough. Such seems to have been the practice during the time of Parliamentary divorce.

Until the year 1798 Parliament did not make it imperative that, in divorce cases, an ecclesiastical divorce *a mensâ* should first be obtained. In that year Lord Loughborough, then Chancellor, framed certain resolutions, which were adopted as Standing Orders of the upper House. These required that any sentence pronounced by the spiritual Court, and the proceedings in obtaining it, should be placed before the House. A petitioner was also expected to attend for examination, if necessary, in order to rebut any suspicion of connivance or collusion, and also to throw light upon a point which the House of Lords always deemed of primary importance, namely, whether a husband was, at the time of the adultery, living apart from his wife, and had, by deed or otherwise, made her conjugal duty more difficult by withdrawing his marital authority and protection.¹ These Orders introduced much greater strictness than had hitherto prevailed in the practice of Parliament on Divorce Bills.

Lords' Standing Orders on Divorce Bills.

Another Standing Order passed by the House of Lords in 1809 required in every Divorce Bill a clause prohibiting the wife from afterwards marrying her paramour. This clause, however, was usually struck out in Committee, "every feeling of humanity and every dictate of policy suggesting that the guilty parties should not be debarred from making amends to social order by entering into matrimony, and that to prevent marriage in such a case would be but to prolong the unseemly spectacle of adultery, and inflict bastardy on innocent and helpless offspring."² A clause prohibiting the marriage of Lady Abdy with Lord Charles Bentinck was struck out of Sir William Abdy's Divorce Bill, in 1816, on

Re-marriage of guilty parties after divorce.

¹ See speech of Lord Chancellor, Parl. Debates, March 1, 1798; First Report of Divorce Commission, p. 10.

² Macqueen's Practice of House of Lords, p. 509.

the motion of Lord Lauderdale, who said that the Standing Order had only been acted upon in one instance, where, from relationship, inter-marriage between the guilty parties would have been illegal. Lord Eldon was then Lord Chancellor. The exception referred to occurred in 1815, in the Earl of Rosebery's Divorce Bill, which prohibited the Countess from marrying Sir John Mildmay, and declared that any children of such a union should be illegitimate. In Dr. Campbell's case, already cited, where the adultery was incestuous, a clause prohibiting the marriage of the offending parties was inserted by the Lords, but the other House refused to ratify it.¹ In Scotland this prohibition prevailed, and in 1771 the Duke of Athol brought in a Bill which would have made it of general application. After considerable discussion this Bill was rejected. A similar measure, proposed by Lord Auckland, in the year 1800, and warmly supported by Lord Eldon, passed the Lords, but was defeated in the lower House.²

Independent
investigation
by House of
Lords.

According to practice, besides obtaining sentence in the spiritual Court, a petitioner in Parliament must have proceeded at law against the adulterer, and produced a record of these proceedings. The object of requiring two suits in inferior Courts was to show that the parties were not in collusion, and that the whole case had been thoroughly examined elsewhere before Parliament was asked to sever a union so sacred in its nature and so important in its consequences.³ Yet the House of Lords always insisted on investigating each case as though it were for the first time on trial, declining to be satisfied by evidence which had convinced another tribunal, or, on the other hand, attaching value to evidence which had been disregarded elsewhere, and allowing a petitioner to supplement his case by fresh testimony. In some cases where husband recovered large

¹ 35 Hansard's Parl. Hist., pp. 237, Chancellors, p. 137.

276.

³ First Report of Divorce Commission, p. 18.

² 7 Campbell's Lives of the Lord

damages at law, the Lords rejected his Bill;¹ in other cases, where merely nominal damages were recovered, a divorce was granted.² In Loveden's case, Session 1811, counsel admitted before the House of Lords³ that an action brought against the adulterer had ended in a verdict against the petitioner. Upon fresh evidence, however, the Bill passed both Houses, though it was ultimately abandoned on account of amendments to which Mr. Loveden objected.⁴

X A Divorce Bill generally contained five clauses:—Clause 1 dissolved the marriage; Clause 2 enabled the petitioner to marry again; Clause 3 gave to him all marital rights in the property of any second or subsequent wife, and to such wife, in case of his death, the rights of a surviving widow in his property; Clause 4 deprived the divorced wife of any rights which, but for the Act, she might have enjoyed as his widow, had she survived him; Clause 5 excluded the husband from any rights which he might otherwise have claimed in any property acquired by the wife after divorce. Where a divorce was obtained at the wife's suit, the property clauses were, *mutatis mutandis*, substantially the same.⁵ Some of the early Acts contained long preambles, justifying legislative interference, and set forth by the petitioner. Here is an extract from Lord Macclesfield's Act⁶:—

Provisions in
Divorce Act.

“Humbly sheweth and complaineth to your most excellent Majesty, your true and faithful subject Charles, Earl of Macclesfield, that Anne, &c., wife to your said subject, having an ample and sufficient provision for her support and maintenance, hath for several years after her marriage to your said subject, lived wholly separate and apart from him, during which time she hath given herself up to a notorious, lewd

¹ Divorce Bills of Mr. Cope, 1801; Colonel Powlett, 1809. Macqueen's Practice, pp. 593, 605.

1824-5.

³ 48 Lords' Journ. 153.

⁴ *Ante*, p. 414.

² Divorce Bills of Mr. Chamberlain, 1814; Lord Lismore, 1826; Mr. Graham, 1827; *ib.* pp. 491, 640, 644. See also Sir William Wiseman's Bill,

⁵ First Report of Divorce Commission, p. 12.

⁶ 9 & 10 Will. III. c. 11.

and dishonourable course of life, and has not only broken the bond of matrimony, but hath had children begotten of her in adultery, and hath used vile arts to have the said spurious issue, or one of them, to be imposed upon him as his own issue, to the dishonour of your said subject and his family, and to the disinheriting of the real and true heirs of your said subject's honour and estate."¹

Cost of Parliamentary divorce.

Parliamentary divorce had been long, and justly, complained of as a remedy open only to the rich, and therefore in practice a denial of justice to the poor. Both the proceedings which were necessary before a Bill could be promoted were costly. In an action at law for damages against an adulterer, the wife was not a party. A suit against her in the Ecclesiastical Court, for divorce *a mensâ et thoro*, was subject to appeal from the Consistory Court to the Court of Arches, and thence to the Judicial Committee. A statute dissolving a marriage was still more costly.² Was

Divorce Commission, 1850.

This was, in effect, the question referred in the year 1850 to a Royal Commission appointed to inquire into the law and practice of obtaining divorces in England.³ Three years afterwards, the Commissioners' report was laid before Parliament. They recommended⁴ a transfer of existing jurisdictions to a Court empowered to dissolve marriages

¹ This personal form still survives in Divorce and Naturalization Acts, and the Royal assent to all such personal Acts, "Soit fait comme il est désiré," was an answer to the petitioner's prayer so expressed.

² Under the most favourable circumstances, the total cost of obtaining a divorce *a vinculo*, including the proceedings at law and before the spiritual Court, was estimated at between 700*l.* and 800*l.* If the case were much litigated, it might cost some thousands. Yet in Scotland at this time 20*l.* sufficed to rescind a

marriage, when there was no opposition; and divorce was a common right, not a privilege confined to the rich. Out of ninety-four Scotch cases between November, 1836, and 1841, almost all the litigants belonged to the lower classes. (First Report of Divorce Commission, p. 18.)

³ The Commissioners were Lord Campbell, Lord Redesdale, Lord Beaumont, Dr. Lushington, Mr. Bouverie, Mr. Walpole, and Sir W. Page Wood, afterwards Lord Chancellor Hatherley.

⁴ Lord Redesdale dissenting.

upon a wife's adultery, and upon incest or bigamy by a husband. Bills were submitted to the House of Lords in 1854, 1856, and again in 1857, but all these were abandoned. In the second Session of 1857 the Government brought forward a measure of like effect which became law,¹ after strenuous opposition from those who thought that, by facilitating divorce, respect for the marriage tie would be weakened.²

Divorce and Matrimonial Causes Act, 1857.

To the new tribunal constituted by this Act was transferred the jurisdiction over divorce exercised for so many centuries by the Ecclesiastical Courts, as well as the more modern jurisdiction of Parliament. Decrees of divorce *a mensâ et thoro* were replaced by judicial separations.³ Actions for criminal conversation, long a scandal to English law, were abolished. Power was given to the Court to dissolve a marriage,⁴ on the husband's petition, for adultery alone; on the wife's petition, for incestuous adultery, or bigamy with adultery, or for some other aggravated offences, or for adultery coupled with cruelty, or with desertion. Strenuous, but ineffectual, attempts were made in both Houses to enlarge the right thus given to wives, and make it correspond more

Jurisdiction of Divorce Court.

Attempts to extend right of wife under Act of 1857.

¹ 20 & 21 Vict. c. 85, amended by 21 & 22 Vict. c. 108; 22 & 23 Vict. c. 61; 23 & 24 Vict. c. 144; 27 & 28 Vict. c. 44; 29 & 30 Vict. c. 32; 31 & 32 Vict. c. 77; 32 & 33 Vict. c. 68; 36 & 37 Vict. c. 31; 41 & 42 Vict. c. 19.

² During the French Revolution, marriages were allowed to be dissolved by agreement of the parties. The result of this experiment was that, in Paris, in the first three months of 1793, the number of divorces was 562, while the marriages were 1880, a proportion of nearly one to three; and in two years and three months, six thousand divorces are said to have been granted. (56 Quarterly Review, p. 509.)

³ In pronouncing a judicial separation, the Court provides for the care of children, who were left to their fate by the Ecclesiastical Court, which had no power of dealing with them. A judicial separation also bestowed on a wife legal capabilities, and rendered her a *feme sole* as to after-acquired property, a boon for which English married women must thank Lord Lyndhurst. (Macqueen on Divorce, p. 277.)

⁴ By the original Act (s. 10), all petitions, either for dissolution or nullity, were to be heard and determined by three or more judges of the Court; but this power was entrusted to a single judge by 23 & 24 Vict. c. 144, s. 1.

nearly with the husband's right to a dissolution of marriage. At the instance of Lord John Manners, with the concurrence of Lord John Russell, the Commons inserted a clause giving the wife divorce when her husband "committed adultery in the conjugal residence." When the Bill returned to the Lords, this provision was struck out, notwithstanding the support of Lord Chancellor Cranworth. Mr. Gladstone, also, though he strongly opposed the Act of 1857, was of opinion that, if divorce were granted at all, it should be on the principle of equal justice to both sexes.¹

Wife's claim
to divorce for
wilful deser-
tion, even
without
adultery.

In the Upper House, Lord Lyndhurst proposed that five years' desertion should entitle the wife to divorce, but his motion was negatived. Joined by the Earl of Donoughmore, he recorded his reasons against this decision in a powerful protest.² Wilful desertion, he argued, is a breach of the man's solemn engagement, made to his wife upon their marriage. "Even in the most ordinary contract, a breach of it on one side puts an end to obligation on the other, and we see no reason why a different rule should be

¹ Speaking upon the Divorce Bill (July 24, 1857; 147 Hansard, 393), Mr. Gladstone asked what prospect was there of any stability under the proposed new law? He pointed out that the *Reformatio Legum* assigned many other causes for divorce besides adultery. "How, therefore," he continued, "can a man who relies upon the *Reformatio Legum* as an authority for divorce upon the ground of adultery refuse it upon the other grounds therein authorized? Again, the *Reformatio Legum* proceeded upon the principle of an equality of rights between the sexes with regard to a right to divorce; and for my own part I shall always assert the principle of equal rights. It is impossible to do a greater mischief than to begin now, in the middle of the nineteenth century, to undo with re-

gard to womankind that which has already been done on their behalf, by slow degrees, in the preceding eighteen centuries, and to say that the husband shall be authorized to dismiss his wife on grounds for which the wife shall not be authorized to dismiss her husband. If there is one broad and palpable result of Christianity which we ought to regard as precious, it is that it has placed the seal of God Almighty upon the equality of man and woman with respect to everything that relates to these rights; and I will offer the utmost resistance to any attempt to induce this House to adopt a measure which, I believe, would lead to the degradation of woman."

² 89 Lords' Journ. 115; 146 Hansard, pp. 232-4; June 23, 1857.

applied to the contract of marriage, more especially in a case destructive of the entire objects of the union, and frustrating all the purposes for which this Ordinance was instituted." He denounced "the extreme cruelty of such conduct towards the deserted wife, in the utter disappointment of all her confident expectations of happiness from the promised love, comfort and society of her husband, and leaving her without hope to the contemplation of a long, dreary and desolate future." At the Reformation, he pointed out, some of our most eminent prelates and divines were of opinion that wilful desertion was a scriptural ground for divorce. Among them were Archbishop Cranmer, the Bishops of London, Winchester, Ely and Exeter, with Latimer and Parker. Abroad, Peter Martyr, Martin Bucer, Beza, Luther, Melancthon, and Calvin also maintained this opinion, which was "adopted by the whole body of Protestants on the Continent of Europe," and "has been the acknowledged doctrine of all their churches to the present day." In Article 8 of the *Reformatio Legum Ecclesiasticarum*, this cause for divorce was recognized; and in his celebrated argument on Lord Roos's Bill, Cozens, Bishop of Durham, said—"The promise of constancy in the marriage ceremony does not extend to tolerating adultery or malicious desertion, which dissolve the marriage."

Again, Lord Lyndhurst endeavoured, but in vain, to extend the wife's power of obtaining divorce upon her husband's adultery. With four other peers, he protested¹ against the Bill because, among other reasons, the relief given to the wife is "partial and unjust" as contrasted with that afforded to the husband; because no distinction is made in Scripture between the offence of the man and of the woman; because "the whole tendency and spirit of the Christian religion is manifestly calculated to raise women to equal rights and equal responsibilities with men." Again,

Protest by
Lord Lynd-
hurst against
unequal treat-
ment of wives.

¹ 89 *Lords' Journ.* 114-15; 146 *Hansard*, pp. 229-30; June 23, 1857.

the dissentients urged,—“With respect to marriage and divorce, the rule of the Roman Catholic church applies to both sexes equally, while all Protestant legislatures (except our own), in declaring that marriage may be dissolved for the cause of adultery, have accorded to the wife the same rights and remedies as to the husband. By our ecclesiastical law (the only law at present applicable to this subject), the same judgment is pronounced in the case of adultery, whether the crime be committed by the husband or the wife; and there appears to us no reason why, in extending the remedy, the principle should be changed.”

Law of Scotland.

Another ground of protest rested upon the law of Scotland, which also treats the offence of adultery alike, whether committed by man or woman. “This law is found to be attended with no inconvenience. The evidence upon this subject is above all exception, and we deem it most desirable that laws which so deeply affect the social and moral condition of the people should, in contiguous parts of the same empire, be in accordance with each other.” A similar argument supported the wife’s claim to dissolve the marriage in case of wilful desertion, even unaccompanied by proof of adultery. By the law of Scotland, wilful desertion, as in all the Protestant churches in Europe, is considered a scriptural ground of divorce; and the law in this respect is regarded by the best authorities in Scotland not only as free from inconvenience, but as just and beneficial.¹

Divorce in Scotland reciprocal, and granted by Commissaries.

It is, indeed, remarkable that in Scotland, after the Reformation, A.D. 1560, divorce *a vinculo* was granted for adultery or wilful desertion, not as a *privilegium*, but by tribunals which placed within reach of nearly all classes a remedy always open alike to husband and wife. Suits were prosecuted before Commissaries at Edinburgh, who were laymen, and their sentences were subject to review in the Court of Session. In 1600, divorced persons were

¹ Protest by Lord Lyndhurst and the Earl of Donoughmore, 89 Lords’ Journ. 115; 146 Hansard, pp. 232–4.

prohibited by a general statute "from marrying him or her with whom the adultery is declared by the sentence to have been committed." By omitting, however, to specify any paramour, the Court often defeated the statute.¹

One, and perhaps the only, advantage of legislative dissolutions of marriage was that the provisions of a Divorce Bill were in the discretion of Parliament, which could therefore adapt these provisions to particular cases, while legal tribunals, being bound by rules, cannot vary their practice. For example, Parliament could rescind or mould existing settlements to meet the circumstances of each case. This power was not at first given to the Court of Divorce. It was partially supplied, however, in 1859, when the Court was authorized to apply at its discretion the whole or part of any settled property for the benefit of the children or of the parents respectively.²

Discretionary power of Parliament in divorce cases.

Following the precedent in Miss Wharton's case, six years previously,³ another marriage was annulled by Parliament in 1696-7, under circumstances reflecting seriously upon the conduct of an English serjeant-at-law. Hannah Knight, a girl of tender age, having been carried off and married, a Bill was introduced into the Commons for recovering her person; "to disannul the pretended marriage of Thomas Gooding, junior, with the said infant; and to attaint one Susan Pasmore, of felony for taking away the said infant, if she do not produce and deliver her up by a certain time; and to prevent the marriage of the said infant with the said Thomas Gooding for the future."⁴ This Bill, together with a petition from Mary Watkinson and Gooding, was referred to a Committee of forty-two members. Watkinson was the girl's mother, who declared that she, being the proper guardian of Hannah Knight, had consented to the marriage, which was not, as suggested, "clandestinely and indirectly made;" and

Hannah Knight's marriage annulled, 1696: Gooding's case.

¹ Macqueen on Divorce, p. 26.

² 22 & 23 Vict. c. 61, s. 5.

³ *Ante*, pp. 398-400.

⁴ 11 Commons' Journ. 753; March 24, 1697.

the girl's interests were protected by "a sufficient settlement."¹ On a subsequent day, fourteen additions were made to the Committee, and all members for Yorkshire were also appointed to serve.

Evidence in
Committee.

The case seems to have excited intense interest. Hannah Knight was the granddaughter of Sir Ralph Knight, under whose will (her father being dead) she was entitled to a portion of 5,000*l*. Her mother married Watkinson, who was her own coachman, and had been her late husband's groom. Under these circumstances, being concerned for the girl's future, her trustees made her a ward in Chancery. These proceedings were, in form, a suit against Watkinson and his wife. On their behalf, in August, 1696, Serjeant Gooding, serjeant-at-law, was retained, and it was alleged that he, finding such a portion settled upon the infant, though otherwise a stranger to the family, told Mr. Marriott, the trustees' counsel in Chancery, that he had a friend who would be glad to treat for a marriage with the young lady. Mr. Marriott rejoined that the girl was very young, and that if the Serjeant had any proposals they should be made in writing, through him to the trustees. No such communication, however, was made; but in September the Serjeant and his son, with Watkinson and his wife, obtained a licence at Doctors' Commons, and in October the girl and Gooding, junior, were married.

Alleged
conspiracy.

At this time Hannah Knight was not ten years' old, though her mother, at Doctors' Commons, had declared her to be twelve, which was then the age of consent, and Thomas Gooding had sworn to this effect. Before the marriage, the Lord Keeper had ordered that the infant should be brought into Court, so that she might be entrusted to the care of some independent person until she should attain her age of consent. Meanwhile, however, the girl was taken away by the woman Pasmore, a former servant in Serjeant Gooding's house. Before the Commons' Committee, the trustees said

¹ 11 Commons' Journals, 758.

they supposed it to be "the design of the Serjeant, his son, and the other confederates, either to keep the child till she comes to the years of consent, and then compel her to agree to the marriage; or, otherwise, if the child die before she attain her age of twelve, that Thomas Gooding, junior, will then be entitled to take out administration to the infant, under the pretence of the marriage, and thereby recover her fortune of 5,000*l*."¹

On the other hand, the mother and quasi-husband, together with Serjeant Gooding, who were heard by counsel before the Committee, set up the following case:—The mother alleged that she was induced to marry her daughter because she suspected that her late husband's relations, "who had used her very hard and unkindly," would endeavour to take her daughter away from her. The match, she said, had been suggested by a brother-in-law to Serjeant Gooding's coachman. In treating for the marriage, the Committee were informed, Serjeant Gooding "did propose to lay out the child's fortune, when paid, in purchase of lands of inheritance, to be settled as a jointure, and in case she survived his son, that the estate so purchased should come to her, the infant and her heirs. Also the Serjeant offered to settle his interest (one moiety) in the office of *custos breviarum* of the King's Bench, wherein he has a term for two lives, upon his said son, immediately upon payment of her portion, and if she should survive his son, this office should remain charged with 50*l*. per annum, as a further provision for her."

Case for defence.

When this settlement was produced, the Committee acutely objected that, as Mr. Gooding would have been tenant in tail, he might, by a fine, have barred the issue, and by a common recovery, have barred the remainder to the girl's right heirs. Upon this objection "the Serjeant declared himself willing that the settlement should be amended" in this particular.

Effect of proposed settlement.

¹ 11 Commons' Journal, 770-1; April 7, 1697.

Celebration of
marriage.

It appeared that the marriage had been solemnized in church "in a public manner, about ten a.m., the church doors standing open." In the evidence there is a picture of the coarse manners and customs of the time, which, having regard to the girl's tender age, appears especially repulsive. One witness, a member of the Serjeant's family, deposed to the Committee:—"That, upon the bedding, he, being present, observed the bride to go very cheerful to bed, attended with the usual solemnities upon such an occasion; that . . . he prevailed upon all the company, the infant's mother and Serjeant Gooding being then present, to go out of the chamber, in order that the bride and her husband might be left alone; and, the company going out of the room, he pulled to the chamber door, and locked it after him, leaving them together in bed for about two hours before anybody went in to disturb them." Then, according to another witness, "the company going into them did prevail upon Mr. Gooding to rise, who, after having dressed himself and taken leave of his wife, went home to his father's house, to bed."¹

Examination
of Hannah
Knight.

As to the child herself, she appeared before the Committee, and said "she was induced to think of marriage from the fear she had of her father's relations taking her away, who she took to be her enemies because they used to speak ill of her mother. Her husband was chosen from her own inclinations. He was not imposed on her by her mother, more than that he was brought by her into her company. She loved him the first time she saw him, believing him very pretty. She married him and bedded him with a free consent and desire, and was sorry he was taken away from her when the company came into the room to advise him to rise. When he left her, her mother came to bed to her, to comfort her."²

Serjeant
Gooding's
explanation.

Mr. Serjeant Gooding's explanation to the Committee was that the match was suggested by a friend of Mrs. Watkinson, and a connection of his coachman; that his son was encouraged

¹ 11 Commons' Journal, 771-2; ² Ib. p. 772.
April 7, 1697.

by the infant's mother, without his knowledge; and that afterwards he had done nothing unjustifiable, he having the mother's consent and approval, who was her child's proper guardian and had the sole disposing of her. This explanation, and copious evidence to justify the marriage, did not satisfy the Committee, and, upon their report, the Bill was carried by 125 votes to 70,¹ larger numbers than were present at a division upon any public Bill at this period.

Bill passed in Commons.

In the upper House, the mother and husband petitioned as before, and were heard by counsel; but so strong was the feeling against them, that the Bill, though received only on April 9, passed through all its stages, without amendment, on April 12.² In the Commons, the words in its title, "for punishing the persons concerned in carrying away the said infant," were omitted; and the Bill as it received the Royal assent was styled "an Act for annulling the marriage of Hannah Knight, an infant, and to direct the guardianship of the said infant."³ Another proof of the indignation caused by this case may be seen in a public measure introduced into the Lords, simultaneously with the private Bill under notice, "to prevent undue marriages of infants, and for better securing the guardianship of them." This measure passed the Lords, but in the other House did not go beyond the Committee stage. Judging by three divisions which are recorded in the House of Commons, there was a belief that existing legislation afforded sufficient safeguards.⁴

Bill in House of Lords.

A much later example of a voidance of marriage occurred in 1827. In this case, which also caused much sensation, the marriage was brought about by fraud. Miss Turner, a girl

Wakefield-Turner Divorce Act, 1827.

¹ 11 Commons' Journ. 773.

² 16 Lords' Journ. 146-7, 9.

³ 8 & 9 Will. III. c. 27.

⁴ 11 Commons' Journ. 789; April 16, 1697. The Act 4 & 5 Phil. & Mary, c. 8, "to punish such as shall take away young women that be

inheritors, being within the age of sixteen, or marry them without consent of their parents," was referred to. But Hannah Knight's marriage was not less scandalous for being consented to by her mother.

only fifteen years old, belonging to a family of fortune, was inveigled from boarding school by a person more than twice her age, named Edward Gibbon Wakefield. She was first told that her mother was dying; then that her father was bankrupt, a story which, by an unhappy coincidence, appeared probable to her, owing to a jocular remark about his limited means, made by her father when settling her school bill. She was told that she might relieve his embarrassments by marrying the chief conspirator, and on reaching Carlisle, where she expected to meet her father, a mock message was brought to her, representing that he was in the custody of bailiffs there, and urging her immediate union as his only chance of relief. Without further hesitation she crossed the border, and was married by Scotch law; both parties declaring in the presence of a witness that they took each other for husband and wife.¹ Happily, before consummation, she was restored to her family. After trial at the Old Bailey, Wakefield and his brother were each imprisoned for three years; and a bill declaring the "alleged marriage" void, passed through both Houses, without a dissentient voice.²

Separation
Acts for
cruelty of
husbands.

There are two instances in which Parliament passed Separation Acts, promoted by wives, on the ground of their

¹ When clandestine marriages were prohibited in England after 1753, the nearest point on the Scotch side of the border was resorted to by runaway couples. Marriages by consent in Scotland being valid for all purposes, a village blacksmith at Gretna Green replaced the Fleet parson, or other accommodating English divine, and was employed to defeat the English law. An Act of 1856 (19 & 20 Vict. c. 96), introduced by Lord Brougham, put a stop to border weddings, by requiring residence in Scotland by one of the parties "for 21 days next preceeding" the marriage. Yet these irregular

unions had high sanction, for an Archbishop of Canterbury, a Lord Chancellor, and a Lord Privy Seal, members at the same time of the privy council of George III., had eloped and were married across the border. So, before 1753, Lord Chancellor Ellesmere was married clandestinely, and Sir Edward Coke was secretly married to the Lady Hatton.

² 7 & 8 Geo. IV. c. 66, "an Act to declare void an alleged marriage between Ellen Turner, an infant, and Edward Gibbon Wakefield." (Annual Register for 1827, pp. 316 *et seq.*; Macqueen's Practice of House of Lords, p. 640.)

husbands' cruelty. In the Ecclesiastical Court, such separations were always granted on similar grounds. Intervention by statute, therefore, was the more remarkable. It will be seen that in both these cases there were special reasons why Parliament superseded the jurisdiction of the Ecclesiastical Courts.

In the year 1700, Katherine, Countess of Anglesea, petitioned the House of Lords for leave to promote a Bill of separation, by reason of her husband's cruelty. After debate it was proposed that the Earl, who was in his place, should "name some lords to go to his lady, and endeavour to persuade her to return to him." Thereupon, the Earl named the Earl of Rochester, Lord Ferrers,¹ Lord Haversham, and Lord Somers. The House then directed these peers to "go to Lady Anglesea and endeavour to persuade her to return to her husband; and, in order thereunto, to let her know that the Earl has declared he is ready to receive her; and upon her submission and good behaviour, will treat her with kindness, and in all cases she shall be safe from any violence; but if they cannot prevail, then to report to the House her ladyship's reasons for such her refusal."²

Countess of
Anglesea,
A.D. 1700.

Peers sent to
persuade her
to return to
her husband.

On March 3, the Earl of Rochester gave the House an account of his mission. He with the other peers had seen Lady Anglesea and "had said all they could to persuade her to return to her husband, but could not prevail. Upon her absolute refusal, her reasons were requested, as the House had directed, and were taken in writing." They were read, but are not recorded. It may be inferred, however, that the Countess refused to return to her husband on the ground that her life was in danger owing to his cruelty. After hearing these reasons, the House resolved not to reject her petition, and allowed her, as she prayed, to bring in "a Bill for a separation for cruelty."

She refuses,
alleging that
her life is in
danger.

Bill allowed.

¹ The mediation of this peer is a curious coincidence. See the case of Lady Ferrers next reported, *post*,

p. 436 *et seq.*

² 16 Lords' Journ. 609; February 27, 1700.

Protest.

There is a long protest on various grounds from Lord Haversham against granting leave for such a Bill. He doubted, first, the utter impossibility of reconciliation, an assumption upon which the Bill was based. Such a measure would give too much countenance to the "trick of a separate maintenance," adopted by the Roman Courts of judicature to cover their doctrine that marriage was a sacrament and indissoluble. A perpetual separate maintenance would be a much heavier judgment upon the Earl than divorce itself, being also "directly contrary to the very design and appointment of marriage." Parliament should do nothing opposed to Evangelic law, which nowhere permitted a perpetual separation without an absolute divorce. Lastly, "though it cannot be doubted but, in the course of so many ages, as great domestic differences have happened between men and their wives as in the present case, yet no precedent has been produced of any Bill of the like nature."¹

No precedent
for such Bill.

Counsel
heard, and
evidence.

There was a full attendance, including Lord Somers, the two primates, and fourteen bishops, but Lord Haversham's was the only protest. Counsel and civilians were heard on March 13 for Lord Anglesea, "what they could object against the Bill;" and counsel, civilians, and witnesses on the other side "to make good the allegations set forth in it."² Eight days afterwards, the evidence of Lady Anglesea's witnesses was read over to them and signed by them. Witnesses were subsequently heard for the Earl. Counsel and civilians were again heard on both sides to sum up the evidence. On the same day, April 1, the Bill was read a second time.³ In Committee of the whole House, April 11, counsel were again heard, and some amendments made in preamble. When the House resumed, the Committee reported that in their opinion "the Countess should be sent for, and heard to some matters suggested in the preamble." She had, by formal resolution, received protection from the House in promoting her Bill,

Protection
given to Lady
Anglesea by
House.

¹ 16 Lords' Journ. 611.

³ *Ib.* p. 640.

² *Ib.* p. 621.

but her friends now required from her husband a pledge "that he would not seize his lady in her passage to or from this House." Lord Anglesea accordingly "declared, upon his honour, that he would not molest or seize her, so long as she was in an honourable place, nor upon the occasion of sending for her."

Then the Bishop of Ely was desired to go for her, and after some time, she being at the door, their Lordships agreed that, when she came in, her husband might "speak to her as he should think fit." Accordingly, a chair being set for her at the table, Lord Anglesea told her, "that if she feared any danger in coming home to him, with her child, he would give all imaginable security that she should not be in the least hurt, and also assured her of all civility and kindness imaginable." Lady Anglesea replied, "that she had been used barbarously, and could never consent to return to her husband again; that she had been in danger of her life, and bore as long as she could, and hoped their Lordships would redress her." Then the Lord Keeper was directed to ask her whether she really thought her life in danger if she should return to her husband. Lady Anglesea: "Yes, positively I do."¹

Lady Anglesea appears before House.

Upon receiving this answer, she being withdrawn, the House appointed a day for considering the Bill again in Committee, ordering that all the Lords should be summoned to attend. On April 14, counsel were heard upon several matters, and were ordered to draw clauses "to be added to the Bill, upon heads agreed on by the Committee, and delivered to them." At four other sittings the Bill was further considered, and two judges, Mr. Justice Nevill and Mr. Baron Tracy, were directed to draft clauses upon fresh heads agreed on in Committee.² At length, on April 26, the Committee reported that they had gone through the

Counsel again heard.

¹ 16 Lords' Journ. 649; April 11, 1700. There was again on this occasion a very full attendance of peers

and prelates.

² 16 Lords' Journ. 658-9; April 23-4, 1700.

Bill passed. Bill, and agreed to it, with several amendments; and it was passed three days afterwards. The prolonged proceedings in this case afford proof of the great care then, as always, bestowed in the Upper House upon all private Bills affecting personal interests, especially if they involved new principles.

Opposition in Commons. In the Commons, Lord Anglesea petitioned, and, as might be expected, his objection was that his wife's charges were within the jurisdiction of the ordinary Courts, and required no remedy from Parliament. Accordingly he prayed for an opportunity, by his counsel, to show, "that the inferior Courts have usual methods and known laws to judge such cases by, with full power to relieve where the case deserves it."¹ But the Commons read the Bill a second time on May 9, and, as in the Lords, considered it in Committee of the whole House, which heard evidence for the Countess and counsel for both parties. On May 23 it passed without amendment, and received the Royal assent on June 12, under the title of "an Act for separating James Earl of Anglesea from Katherine Countess of Anglesea, his wife, for the cruelty of the said Earl."²

Lady Ferrers, A.D. 1757-8. A similar Bill, founded upon the precedent thus set, was promoted in 1757, at the suit of Lady Ferrers, for the Earl's cruelty. The proceedings began by a petition to the House of Lords from Sir William Meredith, brother of Lady Ferrers, who complained that, since her marriage, three years before, her husband had "treated her with great rigour and barbarity, having forbidden her sisters to see or correspond with her, and denied all her friends and acquaintances access to her, frequently threatening to put her to death;" that she had fled from his house, but was forced back by him, and still continued there; that Sir William Meredith, "seeing the extreme misery to which his sister was reduced, and the imminent danger to which her life was hourly exposed, obtained

¹ 13 Commons' Journ. 511.

² 12 & 13 Will. III. c. 16.

two writs of habeas corpus, but the Earl paid no obedience to them, threatening the petitioner's life, and to murder any person who should seek redress for Lady Ferrers." Sir William therefore asked their Lordships to allow him instantly to enforce obedience to the writ of habeas corpus; and it was resolved that no peer or lord of Parliament had privilege against such a writ.¹

No privilege of peerage against writ of habeas corpus.

A fortnight afterwards, Lady Ferrers herself petitioned the House of Lords. She had been married, she told them, in 1751, and for three years past, without any provocation from her, "had been grievously, and in a barbarous and inhuman manner, treated, abused, and beaten by her husband." He had "frequently threatened, and several times attempted to destroy her by strangling her, and had also attempted to set fire to the hangings of her bedchamber." Having experienced so many instances of his barbarous and savage behaviour and disposition, she was fully convinced that there was no prospect of living and cohabiting with him "but under the perpetual and dismal apprehensions and most imminent danger of losing her life." Further, she declared that she had intended to institute in the Ecclesiastical Courts a suit for separation, for cruelty, but her husband had refused to waive his privilege. She was therefore "obliged to crave and implore the aid and protection of Parliament, and prayed their Lordships, out of their great tenderness and compassion for her lamentable case," to allow her to bring in a Bill for separation.²

Statement of grievances.

Suit in spiritual Court barred by privilege.

Lady Ferrers was granted protection while her case was pending; and on March 7, Earl Ferrers was heard in his place. He concluded by desiring that four lords might be sent to his wife, as in Lord Anglesea's case, "to endeavour a reconciliation," and, if she refused, that she might be sent for to give her reasons. Complying with this request, the Earls of Huntingdon and Westmoreland, with Lord Ward

Reconciliation attempted by House.

¹ 29 Lords' Journ. 36; February 7, 1757.

² Ib. p. 50; February 21, 1757.

and Lord Montjoy, went to Lady Ferrers. They acquainted her that her husband desired she would return to him, promising to "receive her with great kindness and tenderness, and everything that has passed shall be forgot,"¹ an instance of magnanimity on his part, considering her sufferings at his hands, which merits special record. Lady Ferrers naturally rejected her husband's advances. She said she should have thought herself inexcusable had she not tried every expedient to make her stay with Lord Ferrers supportable before she left him. "I cannot," she added, "even entertain a thought of returning to him. Misery would not be the worst thing I should have reason to dread, as I am convinced that my life would be, as it often has been, frequently in danger."²

Waiver of
privilege by
Earl Ferrers.

There can be little doubt that only thin partitions divided Earl Ferrers's rages from madness. At times, however, he was well able to reason and exercise self-command. He now took a step which at once defeated his wife's efforts to procure help from Parliament, for in his place he told their Lordships he "waived his privilege as to any suit or suits" that might be brought against him. This waiver put an end to his wife's petition, by enabling her to appeal to the ordinary Courts. Before the end of March, however, she again petitioned, stating that, as she was informed, notwithstanding his waiver of Parliamentary privilege, excommunication and arrest of person, which were the methods of enforcing obedience to any decree of a spiritual Court, could never be executed against a peer. From sorrowful experience, she believed that her husband would not voluntarily obey any such decree, since he had already shown "an utter contempt of all lawful authority." Having, therefore, no security for her freedom when their Lordships' protection was withdrawn, she was liable to be "once more forced into the power and custody of her husband," in which event

Second peti-
tion by Lady
Ferrers.

¹ 29 Lords' Journ. 71 and 76.

² *Ib.* p. 79; March 11, 1757.

"there would be little probability of her escaping a violent and untimely death." Then the unhappy Countess spoke of her "dejection of spirits, which was the natural effect of her long and unexampled sufferings," and left her without hopes of recovery if she were to continue in her present state of "penury, imprisonment, and painful anxiety."¹ Lady Ferrers therefore renewed her application for a Bill of separation. Her petition, however, after debate, was rejected,² apparently because their Lordships were not convinced that she was without efficient remedy elsewhere.

Petition
rejected.

By her proctor, the Countess next cited her husband to appear in the spiritual Court. Meanwhile he went "to Lord Westmoreland's house, where she was for protection, and did demand her." She therefore again petitioned the Lords, stating that she was under great apprehension for her safety, and soliciting their protection for a month. This request was granted,³ and she prosecuted a suit in the Bishop of London's Consistory Court for a divorce *a mensâ et thoro*, and reasonable alimony. Earl Ferrers appeared, but she was unable to obtain final sentence by his refusal to put in any answer. He was pronounced excommunicate for contempt, but did not take this penalty to heart, and continued his persecution of her.

Third peti-
tion.

Upon proceedings against him in the King's Bench, he was admitted to bail, entering into a recognizance with two sureties, in the sum of ten thousand pounds, to keep the peace towards her. Shortly afterwards he was permitted to see her at Lord Westmoreland's seat in Kent, where she had taken shelter. He had first made "most sacred promise to do nothing inconsistent with the strictest rules of civility." In breach, however, of this promise, and of his recognizance, he violently assaulted his wife without any provocation, "and in all appearance intended to shoot her." Four pistols were,

Lord Ferrers
bound over to
keep the
peace.

¹ 29 Lords' Journ. 98-9; March 25, 1757.

² Ib. p. 108.

³ Ib. p. 119; April 6, 1757.

in fact, found in his pockets, primed and loaded with powder and ball; he had also a bag of pistol bullets and a flask full of powder, while in his chaise was a short gun loaded with twenty-one bullets. Upon proof of these facts, Lord Mansfield, then Lord Chief Justice of the King's Bench, issued his warrant, and Earl Ferrers was taken into custody, but admitted to bail upon entering into a recognizance with two sureties, in an additional sum of ten thousand pounds.

Arbitration.

A man of such ungovernable passions was not really fit to be at large. As he continued to obstruct his wife's proceedings in the ordinary Courts, so as to render it almost impracticable for her to obtain relief there, she consented, upon the interposition of friends, to a settlement of their differences by arbitration, he having previously agreed that she should live apart. During this arbitration, which was conducted before two counsel and two civilians, he gave a false account of his income, and, being detected, insulted and abused one of the arbitrators, threatening to shoot him. They were doubtless unaccustomed to these risks in the exercise of their profession, and declined to act further. Then, in 1758, Lady Ferrers again appealed to Parliament for a Bill of separation. She declared that she could not with safety attend any Courts of justice. Her husband disregarded all law and legal authority. He was constantly armed with pistols, and such were his open and deliberate acts of violence that he could not be served with legal process except with danger to the lives of those employed.¹

Fresh appeal
to Parliament.

Proof of
cruelty given
in House of
Lords.

On this occasion the Lords were impressed, none too soon, with Lady Ferrers's sufferings, and with the necessity of releasing her from this odious companionship. They proceeded, however, slowly and with great caution. First, her petition was referred to a Committee, of which Lord Shaftesbury was chairman, and the evidence they took occupies

¹ This narrative is, in part, abstracted from the Countess's petition to the House of Lords. (29 Lords' Journ. 249-50; March 6, 1758.)

several pages of the Journals.¹ By his servants and Lady Ferrers's sisters, clear proof was given of the Earl's cruelty and malignity. He had tried to strangle his wife and set fire to her bedroom. He often kicked and beat her, and held loaded pistols at her head, threatening to blow out her brains. Horrid imprecations accompanied these acts. "I pray God to damn me to all eternity if I don't murder you this night," was one of his threats. He would do for her, he said, and tease her heart out; she was his wife, and he would use her as he pleased. During their stay at Stanton, in Leicestershire, said the Countess's tiring-woman, "I never went to bed without expecting Lord Ferrers would be the death of his wife before morning." She, it was stated, "behaved with the greatest meekness," and "did everything in her power to please him, always submitting, and giving way to him, while his general behaviour towards her was too outrageous, cruel, and inhuman for any woman to bear."² He beat his servants, male and female, and maimed one of them. Drink accounted to some extent for his passion, but such wanton barbarity had a deeper origin.

Upon receiving from the Committee a report of this evidence, the House agreed that a Bill of separation should proceed, but its progress was slow. As it proposed to settle a maintenance upon the Countess out of her husband's property, several brothers and sisters of Lord Ferrers, and his mother, interposed to protect their respective charges upon the entailed estates. After the second reading, Mr. Sewell, appearing as counsel for Earl Ferrers, was asked whether he had any instructions to controvert the facts alleged in the preamble. He replied, that he had no such instructions, but that Lord Ferrers submitted to the House his desire that the Bill might be laid aside, and the matter left to the ordinary course of law. Then Mr. Campbell, petitioner's counsel, was directed to prove the preamble, and did so by repeating evidence given

Bill introduced.

¹ 29 Lords' Journ. 271-5.

garetta Meredith, the Countess's

² Evidence of Miss Anna Mar-

sister; ib. pp. 271-2.

before the Committee. There was no cross-examination, and the Bill was referred to a Committee of the whole House.¹ It was considered by them at five sittings; counsel for and against it were heard, and two judges were appointed to take evidence, and report upon legal questions. At length the Bill was reported, with amendments, and on May 10 was passed.

Proceedings
in Commons.

In the Commons, Lord Ferrers asserted, in spite of his objections and delays in the spiritual Court, that all questions treated by the Bill were cognizable there, and should be left by Parliament to be determined there. He also complained of the large maintenance secured to his wife under the Bill, which would make his income very uncertain and trivial, and leave his creditors unsatisfied. Such a measure was without precedent, and premature; it dealt with a cause depending in the inferior Courts, and so was contrary to the laws and customs of Parliament. That justice might be done, the House ordered that he should be heard by counsel and witnesses, but he did not appear, and his plea for a postponement on account of illness was not entertained. With some amendments the Bill was agreed to, Lady Anglesea's precedent being cited and recognized. On June 20, 1758, the Royal assent was given,² and this long-suffering wife obtained the relief to which she was so justly entitled, though it had been so long delayed.

Bill passed.

Trial of Earl
Ferrers for
murder.

That Lady Ferrers did not exaggerate her husband's violence or her own danger, was proved by the sequel, which is more familiar and also more tragic than the story just told. Two years after this statutory separation, being excited by the conduct of a gentleman named Johnson, who was appointed receiver of his estates, the Earl asked him to his house, sent the servants out of the way, locked the room-door

¹ 29 Lords' Journ. 290-1; April 7, 1758.

² 31 Geo. II. c. 39, "an Act for separating Lawrence, Earl Ferrers, from Mary, Countess Ferrers, his

wife, for the cruelty of the said Earl; and for settling a maintenance for the said Countess out of the estate of the said Earl."

on Johnson's entrance, was heard to say to him, "Down upon your knees; your time is come; you must die," and in that position deliberately shot him. In a fit of remorse the Earl then sent for a surgeon, whom, with the whole household, he kept in constant fear, by his threats and his pistols. At first, while his victim was under treatment, he was sympathetic and even contrite. Soon he began to drink, and, though Johnson was suffering from a mortal wound, would have dragged him from bed had he not consented to own himself a villain. Johnson died before nightfall. The murderer was tried by his peers in Westminster Hall, April 16-18, 1760, found guilty, and hung at Tyburn.¹ His gentleness and propriety of demeanour during the trial, and also during the long procession from the Tower to Tyburn,² were in striking contrast to his previous fierce, mad outbreaks.

Before Parliamentary divorce became common—before, indeed, it began to be granted—some injured husbands

Illegitimacy
Acts.

¹ 19 Howell's State Trials, pp. 886 *et seq.*

² It started from the Tower at 9 a.m. on May 5, 1760. First came a body of constables, said to have been the largest ever before assembled; then a party of soldiers on horse and foot; then one of the sheriffs in his chariot, accompanied by his under-sheriff; next, in his own landau, drawn by six horses, the prisoner, who was dressed in a suit of light clothes, embroidered with silver; another escort of horse and foot soldiers; a chariot in which were another sheriff and under-sheriff; a mourning coach and six; lastly, a hearse and six, provided for the conveyance of the corpse from the place of execution to Surgeons' Hall; for at this period a statute (25 Geo. I.) directed that the body of every person hung for murder should be delivered to Surgeons'

Hall to be "dissected and anatomized." This solemn procession made such slow progress, owing to the crowds of spectators, that it was two hours and three quarters in reaching Tyburn. As they went along, the condemned man asked one of the sheriffs if he had ever seen so great a concourse of people, and on being answered that he had not, "I suppose," the Earl said, "it is because they never saw a lord hanged before." Notwithstanding this long ordeal, which he said was ten times worse than death itself, Lord Ferrers showed great composure; and on the scaffold, though there was a delay of eight minutes there, "his countenance did not change nor his tongue falter." (See account of execution published by authority of the sheriffs, 19 State Trials, pp. 973 *et seq.*)

obtained private Acts declaring the illegitimacy of children born in adultery, and did not seek any further remedy. There were two such Acts in 1542, "an Act for the declaration of Elizabeth Burgh's children to be Bastards,"¹ and another statute, which is variously entitled "an Act whereby the Lady Parr's children be made Bastards," and "Lord Parr's Bill concerning the bastardy of the Lady Anne's child."² Neither of these Acts is printed or inrolled in Chancery. It has been already mentioned that proceedings in the Roos case began in 1662 with a Bill of this nature, which passed in 1666.³ In 1689, Mr. Lewknor obtained a similar Act,⁴ of which there are other examples at this period. A later instance is remarkable because the relief due to a husband under these circumstances was sought by his brother, to whom it was granted by Parliament in order to secure his rights as heir to a peerage. The facts were these :—

Townshend
Peerage Case,
1842-3.

In May, 1842, a petition was presented to the House of Lords by Lord Charles Townshend, only brother and heir presumptive of George Ferrars, Marquis Townshend, Earl of Leicester, Viscount Townshend, Baron de Ferrars of Chartley, Baron Compton, Baron Townshend of Lynn, &c., praying for inquiry respecting the descent of these honours, and an assumption of the style of Earl of Leicester by Mr. John Margetts.⁵ This petition stated that in May, 1807, Marquis Townshend, then commonly known as Lord Chartley, was married to Sarah Dunn Gardner. A year afterwards Lady Chartley left her husband and instituted a suit in the Ecclesiastical Court for nullity of the marriage, *propter impotentiam*. Dropping the suit, she eloped with one John Margetts, a brewer of St. Ives, and they were married at Gretna Green.

¹ 34 & 35 Hen. VIII. c. 40.

² 34 & 35 Hen. VIII. c. 43. See 3 Stat. of Realm, xliii., and 1 Lords' Journ. 235.

³ *Ante*, p. 394.

⁴ 2 Will. & Mary, "an Act to illegitimate any child or children

which Jane, the wife of John Lewknor, Esq., hath had, or shall have, during her elopement from him."

⁵ The facts of this case are reported at length in Clark and Finnelly's House of Lords Reports, x. p. 289.

During many years of cohabitation their children were named after him, and they were called Mr. and Mrs. Margetts; the Marchioness, when addressed as Lady Leicester,¹ saying, "Never call me by that detestable name." In 1823, however, the children were called Townshend instead of Margetts, and at the general election in July, 1841, one of the sons, John Margetts, was elected for Bodmin, being styled in the return to the writ, "the Hon. John Townshend, commonly called the Earl of Leicester." He also qualified as the eldest son of a peer of the realm.

Though he knew of his wife's infidelity, the Marquis Townshend took no steps to dissolve his marriage or illegitimate her children. His brother, however, the petitioner, felt that his interests as heir-presumptive were seriously compromised by these fictitious claims. As he was advised, there were no means by which he could dispute the legitimacy of the so-called Earl of Leicester. Upon the death of certain witnesses, then far advanced in life and in uncertain health, it might become impossible to prevent a person notoriously born in adultery from succeeding to the numerous honours of his family. But as no property depended on the petitioner's succession to the title, he could not file a bill in Chancery to perpetuate testimony. Thus it was possible that "an imposition so audacious as to be absolutely without precedent" might be successful: a manifest injustice not to the petitioner alone, but to the whole peerage.²

Petition to
Lords by
Marquis
Townshend's
brother.

Upon receiving this petition, the Lords appointed a Committee to examine precedents. They found a petition, in Feb. 1672, from Elizabeth, Countess Dowager of Northumberland,³ on behalf of herself and Lady Elizabeth Percy,

Precedents:
Northum-
berland
Peerage,
1672-89.

¹ Upon the death, in 1807, of George, Marquis Townshend, grandfather of the Marquis whose marriage was in question, the latter took the title of Earl of Leicester, his father becoming Marquis; and upon his father's death in 1811, he suc-

ceeded to the Marquisate, but never took his seat in the Upper House, residing chiefly abroad.

² 74 Lords' Journ. 236-46.

³ Relict of Josceline, eleventh Earl of Northumberland, who died in 1670.

complaining "that one who calls himself James Percy (by profession a trunk-maker in Dublin) assumes to himself the titles of Earl of Northumberland and Lord Percy, to the dishonour of that family."¹ In this case, James Percy was directed to put in a written answer to the charge, which he did, afterwards claiming the title and showing a pedigree. He and his counsel appeared at the bar, in 1673, and also counsel on behalf of the Countess Dowager, who charged him with being an impostor. After due consideration, it was resolved that Percy's claim should be dismissed.² He renewed it in 1680 with a like result.³ In 1685 Charles, Duke of Somerset, and Elizabeth, his wife (daughter and sole heir of Josceline, Earl of Northumberland), again complained to the Lords of this false assumption by the Dublin trunk-maker.⁴ There were fresh proceedings, which were not ended till 1689, when, after hearing counsel on both sides, the Lords adjudged that Percy's pretensions were "groundless, false, and scandalous," and ordered that his petition "be dismissed, and that he be brought before the Four Courts in Westminster Hall, wearing a paper upon his breast, on which these words shall be written, 'The false and impudent pretender to the Earldom of Northumberland.'"⁵

Claims to
Scotch peer-
ages.

Other precedents were found in which, in 1762, Henry Borthwick and William Maclellan, assuming the respective titles of Lord Borthwick and Lord Kireudbright, were "ordered not to presume to take upon themselves the said titles, honours, and dignities, until their claims shall have been allowed in due course of law."⁶ Lord Macclesfield's Act was also cited, but as no precedent was found to meet the Townshend case, a public Bill was introduced by Lord Cottenham "for perpetuating testimony in certain cases,"

Public Act to
perpetuate
testimony.

¹ 12 Lords' Journ. 533.

⁵ *Ib.* p. 240.

² *Ib.* p. 578.

⁶ 30 Lords' Journ. 131; December

³ 13 Lords' Journ. 687, 688.

14, 1762.

⁴ 14 Lords' Journ. 24.

and soon became law.¹ Lord Charles Townshend's case having thus, it was supposed, been adequately provided for, his petition dropped.

In 1843, Marquis Townshend himself petitioned the House of Lords, recapitulating the facts already mentioned, especially the return of Mr. John Margetts for Bodmin as Earl of Leicester; declaring that he felt deeply aggrieved by such a usurpation of name and title, and submitting also that one of the privileges of the peerage had been violated.² Lord Townshend explained his failure to obtain a divorce by his continued want of means. He had never been indifferent to the rights of his family, and had constantly denied that he was the father of any of his wife's children.³

Petition by
Marquis
Townshend,
1843.

A second petition was also presented from Lord Charles Townshend,⁴ supplementing his allegations made in the previous Session, and submitting that he was entitled to more summary and direct relief than he could obtain under the provisions of Lord Cottenham's Act.

Second peti-
tion from
Lord Charles
Townshend.

As another search for precedents discovered none which were applicable, the Committee on these petitions recommended that relief should be given by a private Bill, to be promoted not by Marquis Townshend but by the petitioner, his brother. Such a Bill was accordingly brought in by Lord Brougham, "to declare the illegitimacy of certain persons alleged or claiming to be children of the Most Honourable George Ferrars, Marquis Townshend." All parties concerned were heard at the bar, by eminent counsel. Mr. Austin, with Mr. Cockburn and Mr. Hildyard, appeared for the Townshend family. Mr. Erle and Mr. Talbot opposed the Bill on behalf of Mr. Margetts, M.P. By order of the House, the Attorney-General (Sir Frederick Pollock), attended on behalf of the Crown.

Bill intro-
duced in
Lords.

¹ 5 & 6 Vict. c. 69.

Lords, and stand at the bar.

² Under old Standing Orders, the eldest son of a peer was entitled at any time to enter the House of

³ 75 Lords' Journ. 59-61.

⁴ *Ib.* pp. 61-7.

Case for and
against Bill.

During three days, witnesses were examined whose evidence clearly proved that the children of Marchioness Townshend were not her husband's. But the opposition rested on different grounds. Counsel for Mr. Margetts, as well as the Earl of Devon, Lord Cottenham, and other peers, insisted that it was inexpedient, and contrary to all modern precedents, to pass an Act bastardizing children, while the marriage was allowed to continue, and while it was therefore possible, in contemplation of law, that children of that marriage might yet be born. The cited precedents of Burgh and Parr occurred in the reign of Henry VIII.; and in the more recent precedent of Lord Macclesfield the Act did not only bastardize the children, but annulled the marriage. Mr. Erle, in his argument for Mr. Margetts, further contended that Marquis Townshend had precluded himself from any relief by having, in 1824 and subsequently, proposed, for a pecuniary consideration, to acknowledge the legitimacy of all the children; and it was only because Mr. Dunn Gardner had not offered enough, that negotiations were broken off. At all events "the Earl of Leicester" was not to blame for what he did under the circumstances.¹

Second
reading.

On a motion for the second reading, May 16, Lord Brougham, referring to arguments at the bar and to suggestions made by himself and other peers, said the title of the Bill should be altered in Committee, so as to enable the children, supposing their mother's marriage with the Marquis Townshend to have been void *propter impotentiam*, to prove that they were her lawful children by Mr. Margetts, under their marriage at Gretna Green;² and the name of the youngest child should be left out of the Bill, as he was a minor, and without any lawful guardian to protect his interests. Referring to Mr. Erle's argument, Lord Brougham said the relief contemplated by the Bill would be given by Parliament not to Marquis Townshend, but to the heir pre-

¹ 10 Clark and Finnelly's Reports, pp. 312-13.

² Mr. Margetts had died when these proceedings were pending.

sumptive, the petitioner, Lord Charles Townshend. As to Mr. Margetts, he was an innocent party, and no blame should fall on him or on the other children.

After debate, the Bill was read a second time, considered by a Committee of the whole House, and reported with amendments embodying Lord Brougham's views. It was supported by the Lord Chancellor, Lord Brougham, Lord Denman, Lord Langdale and Lord Campbell. On the other side, a joint protest was recorded to the third reading, on May 22, by Lord Cottenham, the Marquis of Clanricarde, the Earls of Devon, Radnor and Wicklow, Lord Monteagle of Brandon, and Lord Dinorben.¹ In their view, the Bill invaded Royal prerogative, by adjudicating upon titles of peerage without any reference by the Crown, or leave given for that purpose. It also infringed the rights of the subject, by adjudicating upon and disposing of private interests and property, excluding the jurisdiction of the ordinary tribunals. The public scandal disclosed in evidence, and alleged disgraceful conduct by some of the parties, furnished no grounds for interference by Parliament; "and the feelings which such transactions and conduct are calculated to excite ought to make Parliament particularly cautious in assuming functions of the ordinary tribunals, in which such feelings are not permitted to operate." It was also pointed out that, by omitting the youngest child from the Bill, he would be substituted for the eldest in any future question of legitimacy, thus leaving the succession to the titles still subject to future litigation.²

Protest
against third
reading.

In the House of Commons, after some debates,³ the Bill passed without alteration, and received the Royal assent on July 12, under the title of "An Act to declare that certain persons therein mentioned are not children of the Most

Bill in Com-
mons.

¹ 75 Lords' Journ. 334.

³ 98 Commons' Journ. 414, 434,

² See also 68 Hansard's Debates, 441, 452, 456; 70 Hansard, pp. 146, 143; 69 Ib. pp. 412, 424, 674. 204, 479.

Recitals in
Act.

Honourable George Ferrars, Marquis Townshend.”¹ There were lengthy recitals, setting forth the birth of various children during the cohabitation of the Marchioness with Mr. Margetts, and that such children were not the issue of Marquis Townshend. Then the preamble proceeded :—

Unlawful
assumption of
titles by
children.

“And whereas the said son called John hath assumed and uses the title and style of the Right Hon. John Townshend, commonly called Earl of Leicester, and hath claimed and claims the privileges of an eldest son and heir apparent of the said George Ferrars, Marquis Townshend; and others of the said children hereinbefore named in like manner have assumed and used the titles and styles to which they would respectively be entitled by courtesy if they were the lawful issue of the said George Ferrars, Marquis Townshend: And whereas Charles Vere Ferrars Townshend, Esq. (commonly called Lord Charles Vere Ferrars Townshend) is the next and only brother of the said George Ferrars, Marquis Townshend, and will inherit his honours if the said Marquis die without lawful issue: And whereas there is danger that the said children hereinbefore mentioned, or some or one of them, may be accounted legitimate, to the dishonour of the peerage of this realm, to the grievous prejudice of the said Charles Vere Ferrars Townshend, and the disinheriting of the real and true heirs of the honours of the said Marquis: Therefore your Majesty’s dutiful and loyal subject, the said Charles Vere Ferrars Townshend, most humbly beseecheth your Majesty that it may be enacted, and be it enacted, &c. that the said several children of the said Sarah Gardner, Marchioness Townshend, hereinbefore respectively mentioned, are not nor were, nor shall they or any of them be taken to be or be deemed the lawful issue of the said George Ferrars Marquis Townshend: Provided always that, inasmuch as the said son called Cecil Mina Bolivar, being an infant and having no lawful guardian, notice of the application for this Act could not be duly served upon him or upon any person on his behalf: Be it therefore enacted that neither this Act nor anything herein contained shall be binding upon the said son called Cecil Mina Bolivar.”

Operative
words.

Proviso ex-
empting
youngest
child.

Diminished
number of
Estate, Natu-
ralization and
Divorce Acts.

By the three classes of general legislation affecting settled estates, naturalization, and divorce, the number of private Bills has been greatly diminished. Between the years 1801

¹ 6 & 7 Vict. c. 35.

and 1866, inclusive, about 2,000 Estate Acts were passed by the Legislature, an average of more than thirty in each year. Between 1867 and 1884, also inclusive, the number passed was 130, little more than an average of seven a year. From 1801 to 1865, the number of Naturalization Acts passed was about 400. Only thirteen became law between the years 1866 and 1884.¹ A similar diminution has occurred in the number of Divorce Acts. Only six such Bills became law before the Hanoverian succession. From the years 1715 to 1775, a period of sixty years, sixty were passed. From 1775 to 1800, a period of twenty-five years, seventy-four such Acts were passed.² From 1805 to 1857, there were 196. From 1860 until 1884 only five became law.³ Three once prolific sources of personal legislation, therefore, have almost disappeared, along with other classes of private Bills which have been mentioned.⁴ In these instances, at

¹ The figures in the text have been compiled from the Lords' Index to Private Acts, 1801 to 1877, and by reference to later statutes.

² 24 Hansard, p. 1262 (Dr. Phillimore).

³ As the Act of 1857 was confined to England, British subjects in Ireland must still be divorced by statute.

⁴ *Ante*, 265, 266. In the Lords' Index to Local and Personal Acts, 1801-65, there are about 600 statutes relating to almshouses, asylums, charitable and benevolent societies and trusts, hospitals and infirmaries, colleges, schools, universities and museums. The necessity for this class of legislation has been for the most part dispensed with by the Charitable Trusts Acts. During the same period county affairs, *e. g.*, provision for the levy and assessment of county rates, the building of shire halls, courts, judges' lodgings and offices, and, last not least, of gaols

and lunatic asylums, were the subject of about 250 Acts. Ecclesiastical affairs, such as the building and repairing of churches and chapels, the providing of burial grounds, sales and exchanges of church property, and arrangements respecting rights of patronage and presentation, also gave rise to about 600 Acts. There were 260 statutes relating to parish affairs, such as the assessment and collection of rates, the erection of workhouses, the relief and employment of the poor, and the formation and boundaries of parishes. Mention has already been made of the numerous local Acts, once applied for, relating to inclosures and allotments, the establishment of small debt courts and courts of conscience, the commutation of tithes, and turnpike and other roads. Within the last half century general legislation has therefore relieved Parliament from the task of considering very large numbers of private Bills.

least, an unmixed benefit may be claimed, for while Parliament has rid itself of irksome labour, much speedier and cheaper relief and redress have been afforded to individuals than they could have obtained in Parliament. An essential distinction obviously exists between these cases, and Bills which raise questions of general expediency, and propose an interference with private rights and property. Parliament having once laid down certain general principles which should regulate divorce and dealings with trust estates, the application of those principles fell, naturally and fitly, within the province of legal tribunals. So, when all aliens might obtain certificates on complying with certain specified conditions, naturalization became merely work of routine, proper for a department.

CHAPTER VI.

EARLY PRECEDENTS, CONTINUED :—THE TEMPLARS : FORESTALL-
 ING HERRINGS AT YARMOUTH : SALT FISH OF BLAKENEY :
 MORTMAIN : FORAYS BY DWELLERS IN TYNDALE : UNRULY
 SCHOLARS AT OXFORD : BERWICK : EXEMPTIONS FROM
 MILITARY SERVICE : FELLOWSHIP OF PHYSICIANS : INCOR-
 PORATION OF SURGEONS : RIVERS, HARBOURS AND DOCKS :
 PAYMENT OF MEMBERS OF PARLIAMENT : LICENSE OF FREE
 SHIPS : LOTTERIES.

To the class of private, or quasi-private, Acts may be assigned the Latin statute concerning the lands of the Templars, passed about the year 1323.¹ This statute was “agreed and enacted by our Lord the King, and the prelates, earls, barons, and other great men of the realm.”² It recites the dissolution of the military order of the Knights Templars,³

Lands of the
 Knights
 Templars,
 A.D. 1323.

¹ 17 Edw. II.; 1 Stat. of the Realm, 195.

² This Act shows no assent by the Commons, and does not even mention their presence in this Parliament. As it principally affected the King, and other lords of fees, who had claimed the Templars' lands as escheats, the assent of the Commons might not be deemed necessary; but this assembly is styled a Parliament, and its Act is entered on the great statute roll as part of the law of the land. This seems to show that even at that time it was not distinctly understood that to make a law on every subject, the assent of the Commons was required, but that it was thought sufficient that the assent of those

persons should be given whose interests were directly or immediately affected. —Report of Lords' Committee, 1823-4, on the dignity of a peer.

³ The order of Knights Templars was founded in 1118. In 1308 they were seized in each county of England, on the same day, January 10, by order of Edward II. They were also seized in Ireland and in Scotland, before any news of what had been done in England could reach the Knights, lest they should attempt to escape. Their estates were placed in charge of the sheriffs, and out of them the sum of 2s. a day was allowed for the support of the grand master, William de la More, and 4*l.* for each

and a great conference held before the King to consider whether the fees of the Templars' lands should escheat to the King, and other lords of the fees. The justices being called on for their opinion "affirmed precisely" that the lords might well and lawfully retain these lands; but "it seemed good to the King, the noblemen, and others assembled in the same Parliament, for the health of their souls, and discharge of their consciences," that, as the Templars' lands were given to them "for the defence of Christians, and of the Holy Land against Pagans and Saracens, and other enemies of Christ and Christians, and the Universal Holy Church," these lands should, according to the will of the givers, be delivered into the keeping of "other men of most holy religion, to the intent that the fruits, revenues, and profits of the same may be converted and charitably disposed to godly uses." It is, therefore, "agreed, ordained and established for law to continue for ever," that the lands, &c. shall be made over to the Order of the Brethren of the Hospital of St. John of Jerusalem, they having been "likewise ordained, instituted and canonised for the defence of Christians and the Holy Church."¹ The Hospitallers of St. John are accord-

Transfer to
Hospitallers
of St. John,
for like uses.

of the knights. De la More died in the Tower before the final suppression of the Order by the Pope, and then the remaining knights were placed in various monasteries, continuing to receive their stipulated pensions. *Annals*, 182.

¹ The Hospitallers of Jerusalem became a military body in 1121, by the name of the Knights of Rhodes, or of St. John. They were suppressed in England and Ireland in 1540 (32 Hen. VIII., c. 24), on the ground that, although the Order drew great sums of money out of the King's dominions for their maintenance, they upheld "the usurped powers of the Bishop of Rome lately used and practised within this realm," affirming maliciously and traitorously the same

Bishop to be supreme and chief head of Christ's church by God's holy word, intending thereby to subvert and overthrow the good and godly laws and statutes of this realm, their natural country, made and grounded by authority of Holy Church by the most excellent wisdom, policy and goodness of the King's majesty, with the whole assent and consent of the realm, for the abolishing, expulsing and utter extineting of the said usurped powers and authority." They had also defamed and slandered the King, his prelates and councillors. By abolishing within the King's realm "the hypocritic and superstitious religion" of Rome, "God's holy word, necessary for increase of virtue and salvation of Christian

ingly to hold these lands of the King, and other lords of fees, upon the same services, that is to say, "in relieving the poor, in hospitalities, in celebrating divine service, defence of the Holy Land," &c. There is a saving clause, as in Saving clause. modern Acts, continuing against the Prior and Brethren of the Hospital any right of action which any person had against the Templars at their dissolution.

In a statute passed in 1357,¹ the Commons of England Forestalling herrings at Yarmouth, A.D. 1357. make a prominent appearance in the preamble, which recites that, at the Parliament then pending, they have complained to the King "that people in Great Yarmouth (Grant Yernemuth) do encounter the fishers bringing herring to the fair, and do buy and forestall the herring before they do come to the town." Also hostellers that lodge the fishers sell herrings as dear as they will, and give for fish what pleases them, so that the fishers withdraw from the town, and "the herring is set at much greater price than ever it was," to the great damage of King, lords, and all people. "Wherefore our Lord the King, seeing the mischiefs in this behalf, by assent of the great men and Commons, hath ordained and

souls, is not only purely and sincerely advanced," but an end put to "the exactions of innumerable sums of money craftily exhausted out of the realm" for the benefit of Rome. In like manner, "it should be most dangerous" to suffer within the King's dominions "any religion being sparks, leaves or imps of the said root of iniquity." Moreover, the Isle of Rhodes, from which the Knights took their old name, had been surprised by the Turks; and it was much better that property in England should be employed and spent there for the defence and safety of the realm than enjoyed by unnatural subjects who had declined from their allegiance, "daily doing

and attempting privily and craftily all that they can to subvert the good and godly policy in which, thanks be to God and our most dread Sovereign Lord, this realm and other the King's dominions now stand in." The Knights' possessions were therefore declared forfeited to the King; but pensions were allowed to all the Knights who came to England, within the King's obedience, and also to their heads, Sir William Weston and Sir John Rawson, on condition that they dropped their titles of Lord Prior and Prior of Kilmainham. The Order was revived by Mary.

¹ 31 Edw. III., c. 2; 1 Stat. of Realm, 353.

established remedy upon the said mischiefs, in form as followeth."

Fishers to be free to buy provisions, &c., where they please.

Behaviour of hostellers.

London fish dealers.

Salt fish of Blakeney.

Then come provisions that herrings shall not be fore-stalled at sea or on land, and as to the order and time of sale at the fair, including a declaration that fishers shall "be free to buy their victuals, and that which they need, where shall please them," which looks like an anti-cipation of the Truck Acts.¹ Hostellers are to be sworn before wardens of the fair "and enjoined, upon a great forfeiture to the King, to receive their guests well and conveniently, and to aid and ease them reasonably." They are to buy, if at all, on specified terms, and are not "because of this ordinance to refuse their guests, but receive and entreat them in good and friendly manner, as they have done before time." A hundred of herring is to be counted by six score; a last by 10,000. People of Yarmouth must sell a last of red herring, bought for 40s. when fresh, for a profit of half a mark; and dealers of London present at the fair must "bring a last from Yarmouth to London for one mark of gain and not above." Thus, more than 500 years ago fish, which ought to have been cheap in London, was thought to be sold too dear.

In the next statute of this reign² a complaint is shown to the King "by the Commons of his realm of England," that salt fish of Blakeney and the coasts adjoining are, and heretofore have been, sold too dear ("a trop chier et excessif pris"), to the hurt of the people, "whereof the Commons do pray a remedy." Desiring to make amendment therein, for relief of his people, the King, by assent of the prelates, and other great men and Commons, ordains and establishes, concerning the sale of this fish, among other things, "that all the ships called doggers and lodeships, pertaining to the haven of Blakeney, and coasts thereunto adjoining, that is

¹ 1 & 2 Will. IV., c. 37; 37 & 38 Vict. c. 48; 46 & 47 Vict. c. 31.

² 31 Edw. III., c. 3.

to say, Suyterley, Wiveton, Clay, Salthouse, Shiringham, and Crowmer, shall discharge their fish within the haven of Blakeney only, betwixt Benord and Hogfleet, and in none other place, upon pain of imprisonment at the king's will, and of forfeiture." Fish which are the subjects of this statute are called "loych fish:" lob, ling, cod, and "orgeys."

In 13th Richard II. (A.D. 1389), a petition for a Bill was presented to the King and his Council by the University of Oxford ("ses devoutz orateurs, chaunceller, gardeyns, provostes, et maistres et escolers"), praying that their property in the city of Oxford might be relieved from the payment of tenths. A like petition was presented by the Bishop of Lincoln in respect of the Hundred of Dorchester, then part of the episcopal seignury. The immunity thus sought aroused great jealousy, and the Commons petitioned Parliament, setting forth that, since the statute of 20th Edward I., the church had bought and amortized many great possessions in various parts of England which used to be assessed for taxation.¹ Certain colleges at Oxford, they continued, had also purchased large properties in that city ("ount purchase grand

Relief sought from taxation on Church and other lands.

¹ The reference here is to the well-known statute, 20 Edw. I., "De religiosis," which says:—"Concerning men of religion, who may hereafter desire to purchase lands or tenements of their own fees or others, whereby those tenements should fall into mortmain, against the form of the statute of our lord the King, thereupon of late enacted: It is provided and accorded by our lord the King and his Council, in his full Parliament, that from henceforth . . . the writ of our lord the King in the Chancery to make inquisition, whether it be to the loss of our lord the King, or of others, if he give or assign to any religious men or others, any lands or tenements according to the form of the writ used in the Chancery, shall not be granted to any man, in

case where those lands or tenements are to come to mortmain, but by petitions put up in full Parliament ("nisi per peticiones in pleno Parlamento porrectas"): And so that if those religious men or others to whom such lands or tenements are to be granted, be so needy and poor that they cannot live of their own, our lord the King hereupon, after due advice had, shall do as shall please his grace" (1 Stat. of Realm, 111, where also is given the statute of the same year, "of amortising lands," which enacts that no lands shall be aliened into mortmain except by assent of the mesne lords, given under seal, and that nothing shall pass where the donor reserves nothing to himself).

Prayer of
Commons
that Bill
should not
pass without
their assent.

partie de la dite ville”), and were now seeking to discharge these properties from due payment of taxes. If such an exemption were granted, it would do great injury to the burgesses of Oxford, and be a bad example and a prejudice to the lords temporal and poor Commons of the kingdom. They therefore prayed that no such Bill should pass without their assent.¹ (“Par quoy plesse al roy nostre tres redoute seigneur avaunt dit, et a les seigneurs de cest Parlement, ordeigner que nulle tiele bille, issint induement pursue, encontre droit et reson, ne soit esloite ne endose, saunz commune assent de les povres Commune de le roialme, pur Dieu et en oevre de charite; considerantz que les ditz gentz de seint Eglise pur nulles tiels purchacez, come desuis est dit, ne sont en nulle maniere pluis charges a lour disme espirituelle, ne a aucune autre taxe, ne subside, qu’ils ne fueront devant l’an vintisme le dit roi Edward, fitz le dit roi Hen.”) This remonstrance must have had the desired effect, since both the Bills for these exemptions were dropped.²

¹ Feigned gifts in mortmain, made with a view to escape from the burden of military service, were forbidden by Magna Carta, c. 36 (A.D. 1215). Eight statutes were passed by Edward I. in restraint of mortmain. The chief of these was 7 Edw. I., stat. 2, passed in 1279, which declared the forfeiture of all lands conveyed to the church without Royal licence. The other Acts were 13 Edw. I., cc. 32, 33 and 41; 18 Edw. I.; 20 Edw. I. (2); and 27 Edw. I. These were what Blackstone calls “the reiterated Statutes of Mortmain,” by which Edward I. tried to close “the great gulf in which all the landed property of the kingdom was in danger of being swallowed” by religious houses and ecclesiastics in his day.

² 3 Rot. Parl. 275, 6. In the year 1294, a list of grievances drawn

up by the clergy was headed with a request for the repeal of the Mortmain Act, but Edward I. answered that he had no authority to repeal a statute passed by counsel of his peers. One chronicler believed this statute to be a judgment on the Benedictines for shortening their services by omissions, as of the Athanasian creed. The Statute of Mortmain was made necessary by large acquisitions of land by the clergy, who were adding house to house, and field to field. Never dying out like families, and rarely losing by forfeitures, the monasteries might well nigh calculate the time when all the soil of England should be their own. It was reckoned that, in the year 1404, the church owned twenty-eight parts of the soil in England out of sixty. (2 Pearson, 308, and authorities there cited.)

There were certain franchises in North and South Tyndale and Hexhamshire, by virtue of which the King's writ did not run there,¹ and the inhabitants took advantage of this immunity to make forays and commit outrages in neighbouring counties. In the year 1414, at the Parliament holden at Leicester, "grievous complaints" of these outrages were made "by the Commons of the county of Northumberland." It was accordingly provided² that process should be taken against such offenders under the common law until they were outlawed; and that then, upon a certificate of outlawry made to lords of franchises in North and South Tyndale and Hexhamshire, the offenders' lands and goods should be forfeited. In 1421 the provisions of this statute were extended to like offenders in Rydesdale, where also the King's writ did not run.³

Forays and outrages by dwellers in Tyndale and Hexhamshire.

Outlawry against offenders.

Rydesdale.

Still these excesses continued in Tyndale. By an enactment, therefore, of Henry VII.⁴ this "lordship and bounds" were annexed to the county of Northumberland. "Forasmuch," the preamble sets forth, "as the inhabitants and dwellers within the lordship and bounds of North and South Tyndale, not only in their own persons, but also oftentimes accompanied and confedered with Scottish ancient enemies to this realm, have at many seasons in time past committed and done, and yet daily and nightly commit and do, great and heinous murders, treasons, robberies, felonies, depredations, riots and other great trespasses upon the King our Sovereign lord's true and faithful liege people and subjects, inhabitors and dwellers within the shires of Northumberland, Cumberland and Westmoreland, Exhamshire (*sic*), the bishopric of Durham and in a part of Yorkshire,⁵ which treasons,

Annexation to Northumberland, 1495.

¹ Tyndale, though on the English side of the border, was an ancient franchise of the Kings of Scotland. In 1293 Edward I. confirmed this grant in favour of John of Balliol (1 Rot. Parl. 114-16).

² 2 Hen. V., stat. 1, c. 5.

³ 9 Hen. V., c. 7.

⁴ 11 Hen. VII., c. 9 [A.D. 1495].

⁵ Half a century later, the character of these dalesmen had not improved. In Hodgson's Northumberland (vol. 3, pt. 2, p. 171) is reprinted a paper, in the Cotton MS., on "The bounds and meares of the 'batable land belonging to England and Scot-

murders, robberies, felonies, and other the premises, have not in time past in any manner of form been punished after the order and course of the common law, by reason of such

land." It was written in 1550 by Sir Robert Bowes, a Northumbrian, at the request of the Marquis of Dorset, then Warden General of the Marches, and gives a graphic picture of border life at that time. The writer describes Cassope bridge as "a common passage for the thieves of Tyndalle, in England, and for the thieves of Liddesdalle, in Scotland, with the stolen goods from one realm to the other." The head of Tyndalle is a place "where few true men have list to lodge." North Tyndall "is more plenished with wild and misdemeaned people" than even South Tyndall. The people there "stand most by four surnames," the Charltons, Robsons, Dodds and Milbornes. "Of every surname there be sundry families, or graves, as they call them, of every of which there be certain headsmen that leadeth and answereth for all the rest. There be some among them that have never stolen themselves, which they call true men. And yet such will have rascals to steal either on horseback or foot, whom they do reset, and will receive part of the stolen goods. There be very few able men in all that country of North Tyndalle but either they have used to steal in England or Scotland. And if any true man of England get knowledge of the theft or thieves that steal his goods in Tyndalle or Ryddesdale, he had much rather take a part of his goods again in composition than pursue the extremity by law against the thief. For if the thief be of any great surname or kindred, and be lawfully executed by order of justice, the rest of his kin or sur-

name bear as much malice, which they call deadly feade (feud), against such as follow the law against their cousin the thief, as though he had unlawfully killed him with a sword; and will by all means they can seek revenge thereupon." At sundry times the dalesmen "have broken out of all order, and have then, like rebels or outlaws, committed very great and heinous attempts, as burning and spoiling of whole townships and murdering of gentlemen and others whom they have had grief or malice unto, so that for defence of them there have been great garrisons laid, and raids and incourses both made against them and by them, even as it were between England and Scotland in time of war. And even at such times they have done more harm than they have received." This immunity arises through the woods, marshes and difficult passes of which their district is full, and in the natural strength of which almost inaccessible places the Tyndallers do much rejoice and embolden themselves. Then the headsmen's houses are very strong: "the outer walls be made of great sware oak trees strongly bound and joined together with great timbers of the same thick mortressed." Also "the walls and roofs be so covered with turves and earth that they will not easily burn." A number of the Tyndallers' houses are set together, so that they may give each other succour in frays, and they join together in any quarrel against a true man, so that for dread of them "almost no man dare follow his goods stolen or spoiled into that country."

franchise as was used within the same while it was in the possession of any other lord or lords than our Sovereign lord, and thus for lack of punishment of these treasons, murders, robberies and felonies, the King's true and faithful liege people and subjects, inhabitors and dwellers within the shires and places before rehearsed, cannot be in any manner of surety of their bodies or goods, neither yet lie in their own houses, but either to be murdered or taken or carried into Scotland and there ransomed, to their great destruction of body and goods, and utter impoverishing for ever, unless due and hasty remedy be had and found." It is therefore provided that North and South Tynedale shall from thenceforth be gildable,¹ and part of the shire of Northumber-

Tynedale to be gildable and the King's writs to run there.

¹ Gildable or geldable (from gildan, Sax. to pay and have), meaning liability to taxation. Camden, dividing Suffolk into three parts, calls the first geldable, because subject to taxes, from which the other two parts were exempt, as being ecclesiastice donatæ (Tomlin's Law D., tit. "Geldabilis.") "Gildable" also occurs twelve times in 27 Hen. VIII. c. 26, which incorporated Wales with England, A.D. 1535-6. This Act recites that Wales is and ever has been a part of England, and subject to the Imperial Crown, "as a very member and joint of the same:" but in consequence of "discrepant laws and customs," and of "a speech nothing like, nor consonant to the natural mother tongue used within this realm, rude and ignorant people" have made distinction and diversity between the King's subjects in England and the Principality. "His Highness, therefore, of a singular zeal, love and favour that he beareth towards his Welsh subjects, and with a view to bring them to a perfect knowledge of English laws, and utterly to extirp the sinister usages and customs in

Wales differing from the same," enacts, by authority of Parliament, that Wales shall thenceforth stand and continue united with England. Another recital similar to that in the text is that there are many lordships and marches lying between the shires of England and Wales, being no parcel of any shires under law and due correction, by reason whereof there have been committed in these lordships and the parts adjoining, "divers detestable murders, burning of houses, robberies, thefts, trespasses, routs, riots, unlawful assemblies, embraceries, maintenances, receiting of felons, oppressions, ruptures of the peace, and manifold other malefacts, contrary to all laws and justice, the offenders making their refuge from lordship to lordship, without punishment or correction." Then the statute proceeds to parcel out these lordships and marches among the different shires, making them "gildable" parts and members of such shires. It is provided by this Act that all Courts in Wales shall be kept in the English tongue, and that no persons shall thenceforth have or enjoy any office

land,' that no franchise shall stand good there, and the King's writs shall run, and his officers and all their warrants be obeyed there as in every other part of that shire. Further, lessees of lands within the bounds are to enter into recognizances in two sureties to appear and answer all charges.

Ordinance
against un-
ruly scholars
at Oxford,
A.D. 1421.

A special ordinance was necessary in the year 1421 to restrain offences committed by unruly scholars at Oxford. From the recital it appears that many clerks, as well as scholars of the University, unknown, armed and arrayed in manner of war (*"disconuz, armez, et arraiez a faire de guerre"*) have oftentimes disseised and put out divers persons of their lands and tenements in the counties of Oxford, Berks and Bucks, and also have hunted with dogs and greyhounds in divers warrens, parks and forests in the same counties, as well by days as by nights, and taken deer, hares and conies, threatening the lives of the keepers (*"ont pris desmes et dames, leverets et conyns, menaceantz outre ceo les gardeins dicelles de leur vies"*). Moreover, they have with strong hand taken out of legal custody clerks duly convicted of felony, and have let these prisoners go at large. Wishing, therefore, to set remedy for the complaint so made to him in Parliament, the King ordained and established that process should be made against all such offenders until they came to answer, or else be outlawed. And upon such outlawry, a certificate thereof being given to the Chancellor of the University, he was to banish the offenders from Oxford. This ordinance was to endure till the next Parliament to be holden after his Majesty's return from beyond sea into England.²

or fees unless they "use and exercise" the English language.

¹ But, according to Sir Robert Bowes, the whole country of Northumberland, in 1550, was "much given to riot, specially the young gentlemen or headsmen, and divers

of them, also to thefts and other greater offences." The Scots in Liddesdale, he says, "assent and join in one" with the Tyndallers and Rydesdallers to overrun and spoil the people living near them.

² 9 Hen. VI., c. 8.

In 1482-3, "for surety of the town of Berwick," and its marches, "and to have it inhabited with great number of the King's faithful liege people, who would there abound and increase by the repair of merchants and merchandize," it was enacted¹ that all merchants bringing merchandize out of Scotland, or its isles, into England, Ireland or Wales, should first take such merchandize to Berwick, where it was to be bought, sold and customed, an exception being made in favour of Carlisle, and the ports and creeks pertaining to the West Marches. Similarly, English merchandize was not to be carried into Scotland, but was to be sold to the Scots nowhere except at Berwick and Carlisle. Burgesses and freemen of Berwick were also to enjoy the exclusive privilege of selling Tweed-caught salmon, when salted.

Monopoly of Scotch trade given to Berwick and Carlisle.

An Act was passed in 1495,² to relieve the Master of the Rolls, officers of Chancery, and other persons from the obligation of going to the wars. It recited the bounden duty of every subject by his allegiance "to serve and assist his prince and sovereign lord at all seasons when need shall require, and most specially such persons as have by him promotion or advancements, as grants and gifts of offices, fees and annuities, which owe and verily be bound of reason to give their attendance upon his royal person to defend the same, when he shall fortune to go in his person in war for defence of the realm, or against his rebels and enemies, for the subduing and repressing of them, and their malicious purpose." If, therefore, any persons having such offices, fees or annuities by royal grant, made default in their attendance, without Royal licence, or unless prevented by "unfeigned sickness, letting or disease," they were to forfeit and lose such offices, fees and annuities. But special exemptions were made in favour of the Master of the Rolls, officers and clerks of Chancery, justices of either bench, barons

Master of Rolls and officers in Chancery relieved from military service.

¹ 22 Edw. IV., c. 8.

² 11 Hen. VII., c. 18, A.D. 1495.

of the King's Exchequer, and other officers and clerks of these places, together with the King's attorneys and solicitors, and serjeants-at-law. Other exceptions were persons in the King's service within his towns and fortalices of Berwick and Carlisle, and the clerk of the King's Council for the time being.

Physicians
relieved from
keeping watch
and ward.

An example of a statute comprising both petition and enactment is that which in 1540 exempted the fellowship of physicians in London from the office of constable and other like duties.¹ "In most humble wise," it begins, "show unto your Majesty your true and faithful subjects and liege men the President of the Conference of the Commonalty and Fellowship of the science and faculty of physick in your city of London, and the Commons and fellows of the same." Divers of them, they complain, though having in cure some Lords of your most honourable Council, and other nobles of the realm, as well as many other of your faithful and liege people, cannot give attendance to them with such diligence as their duty were and is to do, by reason they be compelled within the city of London and suburbs, as in other towns and villages, to keep watch and ward, and be chosen to the office of constable and other offices, "to their great fatigation and unquieting and to the peril of their patients." The petitioners proceed to use enacting words—"May it therefore please your most excellent Majesty, with the assent of your lords spiritual and temporal, and the Commons in this present Parliament assembled, and by authority of the same, to enact, ordain, and establish" the exemptions they seek. Being thus in possession of the ear of Parliament, the petitioners proceed to ask that four of their fellowship may be commissioned to examine the drugs

Examination
of apothecaries'
drugs.

¹ 32 Hen. VIII., c. 40. The Royal College of Physicians had already been founded in 1518, by letters patent, confirmed five years afterwards by 14 Hen. VIII. The charter was obtained through Cardinal Wol-

sey, by the interest of his physician, Linaere, in whose house, No. 5, Knight Rider Street, the first meetings of the fellowship or college were held.

sold by apothecaries. With this object they seek for large powers: among others, to enter houses "as often as they shall think mete and convenient," and to burn or otherwise destroy all such wares, drugs, and stuffs as shall be found "defective, corrupted, and not mete nor convenient to be ministered in any medecines for the health of men's bodies."

A statute of the same reign and session, "concerning barbers and chirugians," contains no prefatory petition.¹

Barbers and surgeons.

The Royal will and that of Parliament is set out in the first sentences, in place of preamble:—"The King, our sovereign lord, by advice of his lords spiritual and temporal, and Commons in this present Parliament assembled, and by auctoritie of the same, by all their common assentis, duly pondering, among other things necessary for the commonwealth of this realm, that it is very expedient and needful to provide for men expert in the sciences of physie and surgery, and for the health of men's bodies when infirmities and sickness shall happen;" wherefore, after further declarations in praise of "men of great experience as well in speculation as in practice of the sciences and faculty of surgery," who inhabit the city and suburbs of London, the statute proceeds to unite in one corporation the

New incorporation of surgeons.

company of barber-surgeons (already incorporated by 1st Edw. IV.), and the unincorporated company of surgeons. They are all to enjoy the same privileges, among which are relief from bearing armour or being put in any watches or inquests. They are also to be entitled every year to take the bodies of four malefactors for dissection (anatomyes). On the other hand it is ordered that barbers in London shall not practise surgery, except only tooth-drawing, and that surgeons shall not be barbers. They must have shop signs, "an open sign on the street side where they shall fortune to dwell, that all the King's liege people then passing by

Barbers not to practise surgery.

¹ 32 Hen. VIII. c. 42.

may know at all times whither to resort for remedies in time of their necessity."

Fence time
for salmon in
specified
rivers.

Regulation of rivers begins with restrictions on the taking of salmon in 1285.¹ The rivers specially mentioned in this early statute were the Humber, Ouse, Trent, Don, Aire, Derwent, Wharfe, Nid, Yare, Swale, Tees, Tyne, and Eden, and a fence time was limited: these salmon rivers were "mises en defens." In the year 1293 there was legislation with a view to restrain weirs and other hindrances to navigation and fishing in the Thames as one of the four great rivers of England; and again in 1297 it was ordered that "all weirs (kidelli) from henceforth shall be utterly put down in Thames and Medway and throughout all England, except on the sea-coast."² These obstructions were once more denounced in 1350-1,³ when there was a recital that the passage of boats and vessels in great rivers was often impeded by the making of weirs, mills, mill-dams, stakes and kiddles (le lever de gortz, molins, estanks, estaches et kideux⁴), in great damage of the people, and writs were therefore to be sent to sheriffs to pull down all such erections as had since been set up. Twenty years afterwards there was "grievous complaint from great men and commons" that these statutes were not observed, whereupon it was once more ordered that all such obstructions should be pulled down, and a penalty of a hundred marks levied upon all who should restore them.⁵

Weirs to be
removed.

Further legislation for better preserving salmon was passed in 1389-90, a fence time being named to regulate fisheries in the Lancashire rivers, Lune, Wire, Mersey, and Ribble.⁶ Again, in 1393-94, Parliament showed the importance it attached to river fisheries by making all county justices conservators, with power to appoint under-conservators, and fine

River
fisheries.

¹ 13 Edw. I. c. 47.

² 21 Edw. I. and 25 Edw. I.

³ 25 Edw. III. c. 4.

⁴ Kiddie (in low Latin, *Kidellus*)
is defined as an open weir, with a

loop or narrow cut in which to lay
fish-traps (2 Coke's Inst. 38).

⁵ 45 Edw. III. c. 2.

⁶ 13 Rich. II. c. 19.

or imprison offenders.¹ There was a recital of a grant by the King's progenitors to the citizens of London that they might pull down and take away all weirs in the Thames and Medway; therefore, the Mayor or Warden of London was to be conservator. In 1423, the fastening of trinks or nets continually day and night to posts, boats, or anchors, across the Thames and other rivers, was described as "a cause of as great and more destruction of the brood and fry of fish, and disturbance of the common passage of vessels, as be the weirs, kiddels, or any other engines." This practice was, therefore, "wholly defended for ever," though the possessors of such trinks, if they were "of assise" (that is, if the meshes were duly adapted for the escape of small fish), might use such nets "in all seasonable times, drawing and pulling them to land."

Mention has already been made of certain grievous complaints, made in Parliament in 1430-31, of Welshmen and other marauders on the banks of the Severn, who stopped ships on their way with merchandise to Bristol, Gloucester, Worcester, and other places.² The statute then passed to free the navigation from these lawless interruptions,³ was supplemented by another Act in 1503-4, which became necessary owing to some dues illegally exacted by local authorities. By prescription or charter, passing tolls or river dues had no doubt long before been levied by municipal bodies and others, in return for services supposed to be rendered to shipping, or as an easy means of raising local revenue. These exactions, often perhaps illegally extorted, had become an extreme grievance on the Severn, and, according to complaints made, could not be defended by long prescription. An Act accordingly passed⁴ which, in a single clause, boldly swept away all existing dues, unless the parties levying them made good their claim at Westminster within a specified date.

This Act is remarkable as the first clear statutory mention of local dues levied in an English river. It begins with

Lawless
Welshmen on
Severn banks.

River dues
and local
authorities.

¹ 17 Rich. II. c. 9.

² *Ante*, pp. 6-7.

³ 9 Hen. VI. c. 5.

⁴ 19 Hen. VII. c. 18.

a recital that, time out of mind, merchants and others had used the Severn, not only "without interruption, trouble, vexation, let or disturbance," but "without anything therefor paying or giving," until lately certain officials in Worcester, Gloucester, and other places, would not suffer any boat, barge, or other vessel to pass without divers impositions set and levied upon merchants and owners of goods and merchandise. "Please it, therefore, your Highness" (the prayer runs) "the premises considered," by the usual advice, assent and authority, "to ordain, establish and enact that whatsoever person or persons, whatever their estate, degree or condition, who hereafter take any such imposition" shall forfeit 20*l.*, recoverable by "action popular of debt." As citizens of Gloucester and Worcester would naturally favour dues levied for their benefit, it was provided that in actions tried under the statute, juries should be chosen from the counties at large. Then there was a saving clause that the Act should not prevent riparian owners from taking "reasonable expense and satisfaction" from persons going upon their lands for hauling or drawing boats or vessels. A still more important saving was, that if any persons or corporate bodies should come before the Council in the Star Chamber before Ascension Day, 1505, and there make out a title to levy dues upon vessels or goods, they should thenceforward, after decree made recognizing such title, be authorized to levy dues "after the manner and form" of the Council's decree.

Fine upon
persons
imposing
dues.

Saving for
riparian
owners.

Proof of title
to dues.

Early river
improve-
ments.

The Lea,
1424.

Ancient works to improve the navigation of rivers must have been of the simplest character, corresponding with the limited engineering knowledge and resources of the time. The Lea has the honour of being the first English river to which an Improvement Act applied. A statute of 1424¹ had appointed a commission "to survey, redress, and amend all the defaults" in this river, described as "one of the great rivers which extendeth from the town of Ware till the water

¹ 2 Hen. VI. In early statutes this river is always called the Lee.

of Thames, in the counties of Hertford, Essex, and Middlesex." It turned out that, like some modern nominees of the Crown appointed to perform gratuitous duties, "the great men, lords, and other persons," named in this commission, were not able to attend to these duties. In 1425, therefore, the Chancellor was authorized to appoint as commissioners indifferent persons dwelling near the river.¹ The chief defaults which they were to make an end of, were trenches leading out of the water for intercepting fish, and dams, stakes, kidels, weirs or mills, hindering the passage of boats.

In 1430-1, a petition of the Commons set forth the natural obstructions to navigation from great numbers of "shelpe" (shelves or shoals), "which be made and come by force and course of the water of Lea, so that ships and boats cannot pass by as they ought." An Act² was therefore passed reciting these and other facts, and authorizing the Chancellor to appoint commissioners with power to remove all these shoals, depositing them on the river banks. There was an important condition that this work should be done, "provided that any can be found who will undertake to do the same." The British contractor, it is clear, was not yet called into being. In executing the work every man's right was to be respected. In case any money were borrowed for the authorized works ("en cas que aucun chevaunce ou creaunce des aucuns sommes de moneye soient ou poient estre faitz,") the commissioners might, by themselves or their deputies, take and collect from each laden ship and boat leaving or entering the river ("prendre et coiller de chacun nief et batell frecte passant ou veignant") fourpence, towards repayment of the loan and for keeping the river clear of shoals.

Removal of
shoals,
1430-1.

Tolls
authorized in
payment for
works.

Apart from the erection of weirs and kindred obstructions, a nuisance of the earliest antiquity in our statute book, constantly denounced yet always recurring, the foregoing Act appears to be the first under which improvement commis-

¹ 3 Hen. VI. c. 5.

² 9 Hen. VI. c. 9.

sioners were constituted with power to execute works and levy tolls. Three years were limited for the operation of the Act. Little inducement, therefore, existed for capitalists to lend money on the security of the rates. Probably for this reason the Act was not renewed.

Dredging and deepening was thus the first work of river improvement provided for by Parliament. Next came the straightening of rivers or their partial diversion by new cuts. Here again the Lea stands first in our statutes. In 1571, an Act passed "for bringing the river Lea to the north side of the city of London."¹ "It is perceived," says the preamble, "by many grave and wise men, as well of the city of London as of the country, that it were very commodious and profitable both for the city and the country that the river of Lea, otherwise called the Ware river, might be brought within the land to the north part of the city . . . through such a convenient and meet cut as may serve for the navigation of barges and other vessels, for the carrying and conveying as well of all merchandizes, corn and victuals, as other necessities from the town of Ware and other places to the city . . . and also for tilt-boats and wherries for conveying of the Queen's subjects to and fro, to their great ease and commodity."

In consideration of these things, "and of divers sundry commodious, profitable and beneficial causes which are like to ensue to the body of this commonwealth, and so incidentally to many particular persons," it was enacted that the Corporation of London might lay out ground for making a trench, not exceeding 160 feet in breadth, for the new channel. Substantial banks were to be made to guard against floods. The Corporation were also to take upon themselves the repair of any breaches, and be conservators of the new cut. Commissioners, appointed by the Lord Chancellor, in Middlesex, Essex, and Hertfordshire, after the completion of the new cut, were again entrusted with the duty

Proposed new
cut for the
Lea, 1571.

Better con-
veyance of
goods and
passengers.

Power to
Corporation
of London to
make cut.

Commission
to clear away
shoals.

¹ 13 Eliz. c. 18.

of freeing the river from shelves and shallows, and of bringing it to a convenient depth in all places for the passage of barges, tilt-boats, and other vessels. This was, in effect, a revival of the statute of 1430-1; but the cleansing was to be carried out at the charge of the three counties. Under the same authority, all "buildings and obstacles standing in or upon" the river which were found to hinder this work might be removed, "to the end that this might be a good and perfect work, and by the grace of God to such good effect and commodity as is hoped and looked for."

There were provisions that no lock or other building should be taken away which, to the commissioners, "or the more part of them," appeared not to hinder the passage of boats or vessels. The Corporation were to make and maintain, at their own expense, sufficient hedges and fences between the land used by them for the purposes of the cut and that of private owners. Sixteen commissioners were to be appointed by the Lord Chancellor, four belonging to the city, and four from each of the three counties, with power to treat and agree for the scouring, cleansing, repair, and keeping of the Lea, so that it might be navigable. Until such an agreement had been made, the Corporation were not to begin the authorized works, or to take any land for that purpose. Further, the Corporation could take no man's ground until they had paid for it. They were bound to finish the works within ten years; to give free passage through the new cut to all boats and vessels, as in the old river, and "as in other common rivers and waters they lawfully may do." If any owner should "refuse to be reasonably compounded with for ground to be taken" under the Act, then the sixteen commissioners, or a majority of them, must "appoint and determine the composition and bargain between both the parties, and the satisfaction for such ground, and all ways, bridges, and other things to the same pertaining."

Protective
clauses.

Compensation
for land
taken;

Finally, and here seems to be the first saving clause in the interest of mill-owners who had acquired water-rights, "if and for water-rights of mill-owners.

the new cut shall be the mean and occasion that any mills beneath or above the beginning thereof shall be by virtue of this Act destroyed, or the profit decayed by want of water," then the Corporation were to pay to the owners or other persons who had suffered loss, "such reasonable recompence in money or yearly rent, or otherwise," as the sixteen commissioners, or any twelve of them, should determine; and the mode of recovering any sums so awarded was then specified.

Discharge of
ballast in the
Severn.

Though, as we have seen, the Thames was a subject of frequent regulation with a view to restrain weirs and remove nuisances from its banks, there are no early Acts sanctioning works for improving its navigation. In 1542-3, an Act was directed against the discharge of ballast in the Severn.¹ It set forth as a great mischief the export of grain from the river "unto parts beyond the sea where grains are very dear." This traffic had of late been carried on by stealth in great boats with foremasts, of the burden of 15 and so to 36 tons, so that the King's Majesty had been deceived of his subsidy and custom, and high prices and scarcity had been caused in the neighbourhood. A worse mischief was that these great boats, on receiving their cargoes of corn, "do then cast out their ballast of stones and other rubble," to the great peril of merchant ships of great burden navigating the river; so that if redress were not had therein, it would be "to the utter destruction of the haven and port of Bristol," which was "chiefly maintained by course of merchandize." The Act accordingly provided penalties on ship-masters tipping ballast, except on shore. Restrictions were also imposed on the export of corn from any creek on the Severn between Gloucester and Bristol; and the last section in what, up to that part of it, was a particular Act, forbade, under penalties, the discharge of ballast within any haven, road, channel, or river in the realm.

River Navigation Acts,
Charles II.

Acts for improving river navigation begin to be more frequent in the reign of Charles II. One, passed in 1662-3,

¹ 34 & 35 Hen. VIII. c. 9.

provides "for making navigable the rivers of Stower and Salwey, and the rivers and brooks running into the same, in the counties of Worcester and Stafford."¹ Closely following it is one for making navigable the rivers Wye and Lugg, in the counties of Hereford, Gloucester and Monmouth.² There is an Act, in 1664-5,³ for making the river Avon navigable from Christ Church to New Sarum. Another, in the same Session, enables Lord Loughborough to make the river and sewer navigable from or near Bristow Causey, in the county of Surrey, into the Thames.⁴ A third provides for making the Medway navigable in the counties of Kent and Sussex.⁵ A fourth is "for making divers rivers navigable, or otherwise passable for boats, barges, and other vessels."⁶ All these are private Acts, not printed in any collection of the Statutes.

Later, in the same reign, there were similar Acts providing, in 1670, for improvements in the Brandon and Waveney;⁷ in 1670-1, for better navigation between Boston and the river of Trent; for settling and preserving the river Wey, in the county of Surrey;⁸ and "for making navigable the river Fale, *alias* Vale, in the county of Cornwall."⁹

Navigation
Acts,
Charles II. to
George I.

Then followed a considerable interval without any such legislation. The Calder, the Tone, in Somerset, from Bridge-water to Taunton, and the Trent, were improved in 1699;¹⁰ in the following Session the Dee;¹¹ and the Larke or Burn from Mildenhall Mill to Bury St. Edmunds.¹² The Cam (called Cham or Grant), between Clayhithe Ferry to Queen's Mill; the Yorkshire Derwent;¹³ the Nene, from Northampton to Peterborough, were made navigable in the reign of Anne.¹⁴ Legislation became more frequent on the accession of George I.,

¹ 13 & 14 Car. II. c. 13.

⁷ 22 Car. II. c. 16.

² Ib. c. 14; and see 7 & 8 Will. III. c. 14; 13 Geo. I. c. 34; 49 Geo. III. c. 78.

⁸ 22 & 23 Car. II. cc. 25 and 26.

⁹ 30 Car. II. c. 20.

¹⁰ 10 & 11 Will. III. cc. 8, 19, 20.

¹¹ 11 & 12 Will. III. c. 24.

¹² Ib. c. 22.

³ 16 & 17 Car. II. c. 11.

¹³ 1 Anne, cc. 11, 20.

⁴ Ib. c. 6.

⁵ Ib. c. 12.

¹⁴ 12 Anne, stat. 2.

⁶ Ib. c. 13.

when improvements were made in the navigation of the Derbyshire Derwent,¹ the Douglas, from the Ribble to Wigan;² the Dun, in its course from Doncaster to Tinsley;³ the Eden, as far as Bank End, Cumberland;⁴ the Mersey (called Mercey) and Irwell, between Liverpool and Manchester;⁵ and the Kennet, between Reading and Newbury.⁶

The Clyde.

It will be seen hereafter that the Clyde owes its first improvement to a tax on beer, obtained by the municipality of Glasgow, in the year 1714.⁷ The great works for deepening and improving the river up to Glasgow were sanctioned by a series of comparatively recent Acts, beginning in 1759.⁸

The Mersey,
Liverpool.

In the private statute book Liverpool begins its record as a port in 1709, when an Act was passed⁹ "for making a convenient dock or basin, for security of all ships trading to and from the port." The time limited for constructing works under this Act was enlarged in 1715.¹⁰ As usual, in local and other statutes of the period, reasons for the proposed work were recited, in the Act of Anne, at great length. Liverpool was declared to be an ancient borough, seaport and corporation, enjoying divers ancient franchises, rights and privileges,¹¹ and having for its better government several good and laudable customs not repugnant to any laws of the realm. By long experience it had been found to be "of great importance for advancing her Majesty's services and revenue and trade in general, and for breeding and employing great numbers of

¹ 6 Geo. I. c. 27. ² *Ib.* c. 28.

³ 12 Geo. I. c. 38; 13 Geo. I. c. 20;
⁶ Geo. II. c. 9; 13 Geo. II. c. 11.

⁴ 8 Geo. I. c. 14. ⁵ 7 Geo. I. c. 15.

⁶ 1 Geo. I. c. 24; 7 Geo. I. c. 8;
3 Geo. II. c. 35.

⁷ *Post*, Vol. II. c. Local Authorities; and *ante* p. 9.

⁸ 32 Geo. II. c. 62; 10 Geo. III. c. 104; 49 Geo. III. c. 74; 6 Geo. IV. c. 117; 3 & 4 Vict. c. 118; 9 & 10 Vict. c. 23; and many subsequent Acts. Until 1840, the Magistrates and Council of Glasgow had sole

charge of the river improvements. By 3 & 4 Vict. c. 118, the Clyde trust was constituted, consisting of twenty-three members of the Town Council and other officials of Glasgow, and ten representative members. By this body and their predecessors the navigation has been greatly improved, with signal advantage to the trade of Glasgow and the Clyde ports.

⁹ 8 Anne, c. 12.

¹⁰ 3 Geo. I. c. 1.

¹¹ Some of these were conferred by 2 Hen. V.

skilful mariners and seamen ; and the port is and may be of great use and benefit to merchants and others trading to the northern parts of this kingdom who, by any stress of weather, and to avoid the common enemy in time of war, may be driven upon that coast." But the entries (*sic*) into the Mersey had been found so dangerous and difficult that great numbers of strangers and others had frequently lost their lives, as well as ships and goods, for want of proper land-marks, buoys, and other directions ; and when such ships entered the port they had been exposed to great dangers for want of a convenient wet dock or basin. It was therefore conceived highly necessary for the security not only of merchant ships, but also of her Majesty's ships of war, that these wants should be supplied, "all which will be a means greatly to encourage trade, advance her Majesty's revenues, and the public good, not only of the town and port, and counties adjacent in particular, but of the nation in general." The town council granted four acres of land, parcel of the waste belonging to them, and lying near "the Poole," for the proposed dock and basin ; but as making and maintaining these works would "cost more than the inhabitants and Corporation could raise," the latter were authorized to charge rates on all vessels entering the port, the limits of which were "as far as a certain place in Hoyle Lake, called the Redstones, and from thence all over the river Mersey to Warrington and Frodsham bridges."¹

Difficult
access to
Liverpool.

Grant of land
by town
council.

Newcastle and the Tyne were dealt with by an Act of 1529,² which recited that time out of mind the Kings of England had been seised of the town and port. It defined

The Tyne:
Newcastle.

¹ In 1811 the Liverpool docks were vested in the Corporation as trustees (51 Geo. III. c. 143). In 1851 the management was transferred to a committee of twenty-four members, twelve nominated by the Town Council, twelve elected by the dock ratepayers (14 & 15 Vict. c. 64). In 1857 the docks, both at Liverpool and Birkenhead, were consolidated into one estate, and the control and management vested in one public trust,

the Mersey Docks and Harbour Board, consisting of eighteen members elected by the dock ratepayers, and three nominated by the Conservancy Commissioners (20 & 21 Vict. c. 162). In 1858, there was a consolidating and amalgamating Act (21 & 22 Vict. c. 92), which has been followed by many other statutes.

² 21 Hen. VIII. c. 18.

the limits of the port to be from a place in the mouth of the Tyne, called Sparhawke, up to Hedwyn Streams, a distance of fourteen miles. Ships had always been allowed to unload at Newcastle, and nowhere else within the port. The town had paid to the King and his predecessors an annual sum of £00/, and Newcastle was now, "as well in time of wars as of peace, the chief key, relief and defence of all parts of the realm thereunto adjoining." It had also been able "to serve the King in his wars with 400 mariners or more, apt and able persons for that purpose." Of late, however, ships had been laden and unladen at divers places to the prejudice of the port, which was likely in this way to come to utter decay and ruin. Accordingly, the petitioners asked, and their prayer received statutory force, that, under pain of forfeiture, goods should not be landed within the port elsewhere than at the town, so that the King and Corporation might receive their dues.

Gateshead.

Gatesyde (Gateshead) was forcibly joined to Newcastle for purposes of local government in 1552-3,¹ because the people used to cast into the haven of Newcastle "rubbish, with all the refuse of their buildings, besides other cleansing of their houses and streets," without any punishment for this evil doing. Moreover, large numbers of carpenters, colliers, fishers, mariners, and other handicraftsmen, having their homes in Gateshead, gained their chief living in Newcastle, and, besides endangering the haven as aforesaid, there daily committed "manifold enormities and disorders, which escape unpunished, to a very evil example in the hindrance of justice," by reason that such offenders repaired to Gateshead and so avoided the jurisdiction. For the reasons thus rehearsed it was enacted that Gateshead should be dissevered from Durham, and placed under the governance of the mayor of Newcastle.

Compensation

In return for this loss of authority the Bishop of Durham,²

¹ By 7 Edw. VI. c. 10.

² Gateshead, with its manor, had, since 1164 at least, been under the Bishops Palatine of Durham. It was

restored to the bishop's jurisdiction by Mary. From 1317 to 1695 its chief officer was a bailiff appointed by the bishop.

and his successors, were to be for ever free of tolls or duties within the united towns of Newcastle and Gateshead. to Bishop of Durham.

No further legislation seems to have passed affecting the Tyne until the reign of George III.,¹ when regulations were made for a better government of the port of Newcastle, and larger powers were given to the Corporation of the Trinity House there. The mayor, aldermen and burgesses were then conservators of the port, and held both port and town in fee-farm under the Crown, being entitled by prescription and various charters to take town, quay, coal and other dues. In 1850, the corporation transferred their duties as conservators to the Tyne Improvement Commissioners,² whose powers have been extended by many subsequent Acts, and who have constructed docks, piers, railways, shipping places, river walls, and other works, and spent large sums of money in improving the river and port. Tyne Improvement Commissioners, 1850.

In 1715 was passed the first Act "for the preservation and improvement of the river Wear, and port and haven of Sunderland."³ A subsequent Act⁴ is noteworthy for its ample recitals, which set forth that Sunderland is a town "well inhabited by rich and able merchants and tradesmen, and may be of great importance, as well for his Majesty's service and revenue, as for the public benefit of the kingdom, having a port or haven capable of containing many hundred sail of ships at one time, and from whence may be loaded and sent great numbers of ships with coals, salt, glass, and other merchandizes, to divers places within this realm, and also to foreign parts; and divers kinds and sorts of merchandizes may be imported in the said port or haven, whereby not only a great revenue will yearly arise to his Majesty, but able seamen to serve on board the Royal Navy, and great numbers of poor people may be constantly employed in and about the work and trade of the said river and port." The Wear: Sunderland. The improve-

¹ 41 Geo. III. c. 86.

² 13 & 14 Vict. c. 63.

³ 3 Geo. I. c. 3; and 13 Geo. I.

⁴ 20 Geo. II. c. 18.

ment of the port (it is further declared), so that laden ships of considerable burden may ride in and sail out at all tides "will be a means of reducing and keeping low the price of coals in London and other delivering ports, and will very much tend to the encouragement and increase of navigation and trade."

Silting-up of
west-country
harbours by
tin works,
1531-2.

Harbours rank equally with rivers as objects of early legislative care. In Devon and Cornwall certain ports and havens were in danger of silting-up from the operations of tin-workers. So, in 1531-2, "piteously shew and complain" unto the King and Parliament the inhabitants of the towns and ports of Plymouth, Dartmouth, Teignmouth, Falmouth, and Fowey. They set forth that in times past these ports had been the principal and most commodious of any in the realm, so that at low water ships under 800 tons could "easily enter and there lie in safety what wind or tempest soever did blow." Not only had a great multitude of merchant ships been in this way preserved, but in time of war these havens and ports had been "the greatest fortification and defence of that part of this realm, and the special preservation of great part of the navy." A melancholy picture is then drawn of these ports, which are said to be utterly decayed and destroyed by the stream-works of tinnerns, "more regarding their own lucre than the common wealth and surety of this realm. Such persons have dug for tin and washed their ore in the streams, discharging into these ports a marvellous great quantity of sand, gravel, stone, rubble, earth, slime and filth, so that whereas before this time ships of 800 tons might easily have entered at low water, now a ship of 100 tons can scarcely enter at half-flood, to the utter undoing of all the good towns in Devon and Cornwall, if remedy be not in that case speedily provided." For reformation thereof, Parliament provides, under penalties, that tinnerns shall not carry on stream-works without hatches and ties sufficient to keep all rubbish from the watercourses.¹

¹ 23 Hen. VIII. c. 8.

In spite of the indignant preamble to this statute, reciting their grievances, the inhabitants did not take much trouble to put it into force against offenders. In 1535-6, therefore, another Act passed,¹ severely condemning the inhabitants for having such "little regard, respect, love or affection to the amending and maintenance" of their respective ports and havens, as shown by their having commenced or pursued no manner of suit against the tanners, to the great animation and encouraging of the same. Increased penalties were imposed, and as the tanners had resorted to their Stannary Courts to maintain them in their evil-doing, all actions in those Courts begun with that view were made void.

New penalties
imposed on
tanners,
1535-6.

Jurisdiction
of Stannary
Courts ousted.

His Majesty's "true and faithful subjects" at Exeter complain, in 1539, of lets and nuisances in their port and river from weirs and silt, so that whereas, from old antiquity, ships could come up from the high sea to the city and there unload merchandize, now such goods must be carried by land, to the great hurt and impoverishing of the merchants, besides the overflowing and drowning of meadows and pastures. Therefore, the mayor, bailiff and commonalty of Exeter, pray that they may receive authority to pluck down, dig, moyne (mine), break, bank and cast up all manner of weirs, rocks, sand, gravel, and other lets and nuisances between their city and the sea.

Port and river
of Exeter,
1539.

They propose to recompense owners for land taken "after the rate of twenty years' purchase," or else as much as shall be adjudged by the judges of assize at Exeter, for the time being. Besides satisfying owners, the Corporation also undertake to deal with "tenants, farmers and occupiers." In default of payment, remedy may be had by action for debt. As frequently happens at this period, there are no enacting words in the statute; throughout it is in form a petition, without express authority from Parliament for its provisions; but it received the royal assent and took its place among the statutes of the realm.²

Compensation
for land at
twenty years'
purchase, or
submission to
judges of
assize.

¹ 27 Hen. VIII. c. 23.

² 31 Hen. VIII. c. 4.

Orford.

There are three Acts in the following reign for the preservation and improvement of havens, relating to Orford, in Suffolk, Chichester and Dover. Orford is described¹ as "greatly shoulded (shoaled) and decayed," a result attributed to the "abuse of certain stall-boats" who use unlawful nets to the great destruction of the fry of fish, by reason of the smallness of the maskes (meshes) of their nets. By the continual standing of those boats, and their use of these nets, the natural course of the tides is said to be hindered; wherefore the Act prohibits, under penalties, the use of any net within Orford haven, or a branch of it called the Gull, "except the maske or shale throughout the whole net do contain two inches and a half at the least in wideness from knot to knot." How larger meshes in nets would prevent shoaling in the haven does not clearly appear.

Port of
Chichester,
1575.

The Chichester Act² is of greater interest, for it authorizes the cutting of a new channel "for bringing the haven to the suburbs," and contains unusually elaborate provisions. Chichester, a very ancient city (so runs the preamble), hath a very fair haven, which ebbs and flows within one mile of the city, and is able to harbour in safety at low water, in extremity of tempest and foul weather, a great number of ships. It is therefore very necessary and commodious to all her Majesty's subjects trading and travelling the seas by that coast, either in time of war or peace, "in so much that it is taken to be at this present the best haven between Portsmouth and Thames mouth." The mayor and citizens say that they have long maintained their haven, as well as a pier or quay of free-stone, for the more convenient lading and unlading of vessels. But this pier or quay is a mile and a half distant, and hath neither at it nor near it any warehouses, storehouses or other place of receipt fit for the safe holding of merchandize, or for the lodging, harbouring or refreshing of merchant mariners benighted

¹ 27 Eliz. c. 21.

² Ib. c. 22; *ante*, p. 7.

there. Owing also to the deepness, foulness and tediousness of the ways, the carriage of wares between this quay and the city hath of late years grown to an excessive charge; and at divers times of the year, especially in wheat season, barley season, hay harvest and corn harvest, carriages are not to be had for money. Merchandize at such times must be left upon the open quay to be spoiled or lost; and from these causes trade is decayed and Chichester haven nothing so well haunted and frequented as heretofore.

Difficulties of
land transit.

There are then recitals that all these discommodities may be avoided by cutting out, trenching, and draining the haven to the suburbs of Chichester. In the judgment of "divers wise and discreet persons, skilful and experienced in like works"—here the engineer makes his first appearance in our statute-book—"the said haven, with the confluence of such rivers, works and springs of waters as are and rise near and about the city, may be very easily (in respect of possibility) cut out, trenched and drawn to the suburbs," so that lighters and small boats may pass to and fro. The petitioners pray, therefore, that they may be empowered to take land for the proposed trench or channel, between Dell quay and Fishborne, "of such length and breadth throughout as to them, their deputies and workmen, shall seem most meet and convenient and necessary for the same, and in such place and places as they shall find most apt, meet, and fittest for that purpose," and also fifty or threescore feet in breadth on each side of the new channel by all the length of the same; so always that they do not in any one place take, both in channel and in ground, above 200 feet in breadth. This space and breadth are thought requisite for the channel, its banks and walls, and for placing the soil cast out in digging it; so that there may be banks to save the land on either side from flooding; also that all people may on these banks pass freely, on foot or horseback, between Chichester and its old haven; lastly, that boatmen may thereupon, with-

Engineers'
opinion as to
works.

Power to take
land.

out offending any owner of land, draw their boats along the channel against the tide, as sometimes being laden they may be constrained to do.

Petition and
Act combined.

Then follow prayers for special provisions enabling the corporation to carry out the proposed works. No mention is made of Lords or Commons, nor is their assent asked for or indicated. After the preamble, the mayor and citizens "do most humbly beseech your most Royal Majesty that it may be enacted and established in manner and form following, that is to say, that it shall and may be lawful to the said mayor and citizens, their successors and assigns, at any time or times hereafter," to do what is set forth. Each subsequent clause begins—"And that it may also be enacted;" and validity is given to the Act by the usual form of Royal assent. The clauses are carefully drawn and unusually precise. The mayor and citizens are to hold and enjoy any land taken, on compounding and agreeing with owners; they are to have "all such jurisdiction, power, rule, government, authority, and correction" over the new channel, and the banks on both sides of it, "and all royalties, liberties, franchises, privileges, customs, fishing, fowling, lighterage, and all other profits, commodities, casualties, and advantages whatsoever . . . in as large, ample, and beneficial a manner, to all intents, constructions and purposes," as belonged to themselves, or their predecessors, in respect of existing havens and creeks, according to ancient customs, or under charters and grants.

Power to Cor-
poration to
hold land.

Within half-a-mile of the new channel, the Corporation are empowered to divert into it any brooks, waters, streams, or springs, and to take land for that purpose, on making recompence for the same, and for "the losses, hindrances, and damages" which lords, owners, and occupiers may sustain thereby. This looks like the special compensation now given for severance and compulsory sale. No lands may be taken or used until after composition with owners; and in case of difference the amount is to be settled by twelve commissioners

Compensation
for land to be
assessed by
special com-
missioners.

appointed by the Lord Chancellor, four to be aldermen or other discreet citizens of Chichester, with eight noblemen or gentlemen in the commission of the peace for the county. Six are to be a quorum, the same proportion being observed. Their decision is to be "set down in writing, indented under their hands and seals," whereof one part is to be delivered to the owners, and the other to the mayor; and due provision is made for the recovery of any money so awarded. The Corporation are to maintain fences and divisions between their new possessions and the ground of adjoining owners, as well as convenient ways and bridges. Under penalties and forfeitures, goods must be laden and unladen only at a wharf or quay to be made for that purpose. The commissioners may award yearly rents in compensation for lands taken; any other moneys awarded are to be paid to owners, at the dwelling-house of the mayor for the time being, before entry. Lastly, there is a saving clause, differing little from the wording of similar clauses in modern Acts:—

"Provided also that this present Act or anything therein contained shall not in anywise be available, extend or give any liberty to the said mayor and citizens, and their successors or any of them, to have or take any the lands, tenements, hereditaments, or any liberties, franchises, realties (royalties?), privileges, jurisdictions, rights, customs or duties, of the Right Hon. Charles Lord Howard, Baron of Effingham, Lord Chamberlain of her Majesty's most honourable household, and of the most noble Order of the Garter Knight, his heirs or assigns, of or in the manor of Appledram, in the county of Sussex aforesaid, or any part or parcel thereof, or thereunto belonging or appertaining, or otherwise howsoever, without the special assent and agreement of the said Lord Howard, his heirs or assigns, first had and obtained in writing, under his or their hand and seal."

Saving rights
of Lord
Howard of
Effingham.

In this statute, dating three hundred years ago, we find a distinct advance in legislation adapted for new works. As in similar Acts of to-day, there are provisions for the compulsory taking of lands on the plea of public advantage, for the assessment of damages, the recovery of moneys

Contrast
with powers
in modern
Works Bills.

so awarded, the vesting of lands in promoters, the maintenance by them of fences, and construction of accommodation works. They are allowed to acquire water rights; a right of entry on lands is given to them in order to make and maintain dikes or trenches for the passage of water; and, with a view to the usual quay dues, goods must not be landed elsewhere than at the quays built by them. There are no powers to raise capital for the purposes of the work, but the Corporation probably saw other ways of borrowing money. Another deficiency which strikes the modern draftsman is the absence of any machinery for dealing with limited owners. The powers to take land and water rights are very sweeping. Whether owners and occupiers had any notice of this intended legislation, and whether any of them appeared to oppose it, there are no means of ascertaining. Lord Howard of Effingham, as a peer of Parliament, had exceptional opportunities of protecting his interests.

Decay of
harbours
through dis-
charge of
ballast.

Rye and
Winchilsea,
A.D. 1548.

In harbours, as in rivers, the unloading of ballast was an offence frequently denounced. The inhabitants of Rye and Winchilsea complained, in 1548, of the decay from this cause of their harbour or roadstead, the Camber, which in time past was able to receive two hundred or four hundred sail, yet now only thirty or forty sail could lie there, and they could only enter the harbour with great danger. Other causes, not to be dealt with by legislation, were evidently at work to destroy the harbour, but an Act passed forbidding the casting out of ballast there under penalties.¹

Dover Har-
bour, 1580-1.

Specific duties were imposed in 1580-1 for the repairs of Dover harbour, described as convenient on the coast of the narrow seas for vessels wishing to avoid imminent danger of tempest, pirates or the common enemy in time of war.² Queen Elizabeth, minding to provide for the safety of such vessels, and understanding, from lords of her honourable Privy

¹ 2 & 3 Edw. VI. c. 30.

² 23 Eliz. c. 6; *ante*, p. 6.

Council and others, that Dover was a convenient place for harbour, and that skilful men had contrived a probable plan and undertaken the finishing and perfecting thereof for a competent sum of money, was disposed, through Parliament, to be liberal in forwarding this object, especially as the inhabitants of Dover to their ability had already bestowed great sums of money in and about the same. Parliament, therefore, proceeded to authorize the levy of a tonnage duty of threepence on ships passing to and from any foreign port, and threehalfpence for every chaldron of sea-coal or grindstones. These duties were limited for seven years. They were continued by various Acts of the same reign; and Dover has the distinction of being the subject of more statutes for maintenance and repair than any harbour or port in the United Kingdom.¹

Tonnage dues
on shipping.

Two private Acts, passed in the fifteenth and sixteenth centuries, throw some light upon the payment by constituencies of wages to their representatives in Parliament. The former of these Acts was obtained in the year 1430-1, on a petition from the commonalty of the Isle of Ely, who wished to be relieved from future charges of this kind by payment of a capital sum. The petition embodying this statute, which is in Norman French,² set forth that for a long time previously there had been great discussion and division (*graundes debatez et discordez* *ount este moevez et pendauntz*) between the county of Cambridge proper and the Isle of Ely, forming part of that county, concerning the payment of wages and expenses to their knights of the shire attending Parliament (*pur le paiement des gagez et expenses des chivalers de le dit counte*). Mediation by the Bishop of Ely and other great men had led to an agreement that the Isle of

Payment of
Members:
Isle of Ely
relieved from
charge,
1430-1.

¹ 31 Eliz. c. 13; 35 Eliz. c. 7; 43 Eliz. c. 9, s. 1; 1 Jac. I. c. 32; 14 Car. II. c. 27; 11 Will. III. c. 5; 2 & 3 Anne c. 7; 4 Geo. I. c. 13; 9 Geo. I. c. 30; 11 Geo. II. c. 7; 31 Geo. II. c. 8; 26 Geo. III. c. 11; 34 Geo. III. c. 112; 47 Geo. III. c. 69; 9 Geo. IV. c. 31; 6 & 7 Will. IV. c. 125; 11 & 12 Vict. cc. 11 and 97; 24 & 25 Vict. c. 45; 28 & 29 Vict. c. 100; 34 & 35 Vict. c. 166; 36 & 37 Vict. c. 235.

² 4 Rot. Parl. 382.

Ely to pay
200*l.* to Cam-
bridgeshire.

Ely should pay 200*l.* in full discharge of all contributions, present and future, so that no cause of discord should arise thereafter (*pur les ditz debatez et discordez perpetuelment appesir et exteinter*). For the better carrying out of this agreement, the petitioners asked that, by authority of Parliament, licence should be granted to any abbot, prior, mayor and commonalty, or head of college, within the county of Cambridge, to purchase with this sum of 200*l.* land of the yearly value of twenty marks, and hold it, in order that from the rent so accruing a third part of the wages and expenses of knights of the shire should be discharged.

To this petition the King assented; and it is conjectured¹ that this sum of 200*l.* was applied in purchasing the manor of Burlewas, in Madingley, Cambridgeshire, mentioned in an Act passed more than a century later. According to the preamble of this Act,² certain persons were, in 1543, seised of this manor of Burlewas, consisting of a hundred acres of meadow and a like acreage of pasture, "being in all of the yearly value of ten pounds, and so let to farm at this day, to the use and intent that the profits thereof should yearly be received and taken for and towards the payment of fees and wages of knights" of the shire chosen to sit in Parliament, whereby inhabitants within the county "heretofore have been clearly discharged for and concerning the payment of knights' wages for Parliament."³

In order to secure a continuance of this trust, and to make known "what person hereafter shall be tenant of the premises and charged to answer and pay" the rental of the

Manor held
on trust to
pay rent to
county
members,
A. D. 1543.

¹ 1 Notit. Parl. 139; 2 Lyson, 232; but the period when the arrangement was entered into with Ely is there wrongly cited.

² 34 & 35 Hen. VIII. c. 24; 3 Stat. of Realm, 924.

³ The date when this property was originally applied to the payment of members is not stated; it must have been an ancient trust, as the manor

in question is described as "otherwise called 'the Shire Manor.'" But the recital quoted in the text, that the whole county was relieved from liability, shows either that knights of the shire were contented with much smaller wages than in 1430, or that the men of Ely had made a bad bargain.

manor, "all the gentlemen of the county" petitioned for themselves and the whole inhabitants, that the manor might be conveyed to John Hynde,¹ one of the King's serjeants-at-law, and his heirs, on condition that they paid such rental annually to the knights of the shire and the sheriff for the time being. This petition or Bill contained enacting words, incorporating the knights of the shire and sheriff, and their successors, as "wardens of the fees and wages of knights of the shire of Cambridge, chosen for Parliament," with perpetual succession; and they were empowered to receive and apply the ten pounds accordingly, with appropriate remedies if the rent were in arrear. Section 7 of the Act, in consideration of the premises, for ever discharged the county and inhabitants "of all such sums of money as heretofore have been accustomed to be levied and paid for fees to knights of the Parliament of the county."²

Knights of shire and sheriff incorporated, with perpetual succession.

Various public statutes imposed restrictions on navigation, Acts for encouraging

¹ Serjeant Hinde afterwards became one of the justices of the Common Pleas. He built Madingley Hall, and was possessed of a neighbouring manor, Marham, which was held under the prior of St. John of Jerusalem, and an estate which had belonged to the Knights Templars.

² From the collection of writs *de expensis*, made by Sir F. Palgrave, it seems that the wages paid to knights of the shire were not always uniform; sometimes one knight received three shillings a day, and his colleague twenty pence. In 1324, the charge levied for Thomas de Ludor and Johannes de Sonninghall includes fourteen marks for twenty-four days' attendance at the Parliament, and two days coming and returning, at the rate of 3s. 4d. each a day. Electors sometimes seem to have bargained that their work should be done cheaply. There is a presentment in 1320 by a

grand jury, "that the sheriff of Lancashire had returned two knights without the assent of the county, and had levied 20*l.* for their expenses; whereas the county could, by their own election, have found two good and sufficient men, who would have gone to Parliament for ten marks, or at most for 10*l.*" By indenture of agreement made in 1463, between John Strange, member for Dunwich, and his constituents, it was witnessed that "John Strange granteth by these presents to be one of the burgesses for Dunwich at the Parliament to be holden at Westminster, for which, whether it hold for longer time or short, or whether it fortune to be prorogued, the said John Strange granteth no more to be taken for his wages than a cade full of herrings, and a half-barrel full of herrings, to be delivered on Christmas next coming."

British ship-
ping.

with a view to encourage British shipping. For example, alien merchants were only allowed to freight foreign vessels.¹ Such vessels must not be used if English ships could be had.² Goods were to be exported in ships in the King's legiance.³ Importations, again, from Africa, from America and Asia, were to be in British ships; and so, with limitations, in other cases.⁴ It seems to have been found necessary at the close of the seventeenth century to abate some of this severity, though not by public legislation. The case of each ship was dealt with separately, or at the most two vessels were classed together and licensed to trade as free ships, discharged from the penalties of the Navigation Acts.

Private Acts
licensing free
ships, A.D.
1696—1711.

Of these private Acts, the first was passed in 1696-7. Its title was "An Act for importing several goods and merchandizes laden in Turkey, on board the ships *Success* and *Dragon*, galley, paying customs, as if imported by English ships."⁵ In the following Session four Acts were passed, allowing the ships *Panther*, *Gloucester*, frigate, *Searborough* and *Antelope* (formerly taken as prizes and condemned), to trade as English-built ships.⁶ Another gave leave to the *Maryland Merchant*, of Bristol, presumably foreign built, to arrive and import her lading.⁷ A third and fourth applied to three other prize vessels, re-named the *Ruby*, *Plymouth*, and *Sally Rose*.⁸ In 1698, similar exceptions were made, one in favour of the ship *Hope* on the ground that she was of great length, and very serviceable for bringing ships' masts into this kingdom.⁹ Statutes with the same object continued to be passed until 10 Anne, when no more are found. Only thirty-three vessels in all received these privileges.

Steamboats on
the Thames.

When steamboats first came into use, an attempt was made by the London watermen to prevent any from engaging

¹ 3 Edw. IV. c. 1.

² 4 Hen. VII. c. 10.

³ 5 Rich. II. c. 3; but see 6 Rich. II. c. 8.

⁴ 12 Car. II. c. 18; 15 Car. II. c. 7.

⁵ 8 & 9 Will. III. c. 20.

⁶ 9 Will. III. c. 51.

⁷ Ib. c. 52.

⁸ Ib. cc. 53, 59.

⁹ 10 Will. III.

in passenger traffic on the Thames. The watermen contended that, according to their charter and the usage of the City of London, no persons could be allowed to own a vessel plying for passengers on the Thames, nor to work on board such a vessel, unless they were freemen of the City, and belonged to the watermen's chest. This would have effectually prevented the employment of engine-men, but, in addition, the watermen engaged all their members to refuse to navigate any steamers. After long dispute and delay, it was decided that it was sufficient if one out of a number of owners were a freeman, and that engineers were not subject to the watermen's regulations.¹

Private lotteries were often sanctioned by special enactment after they had been declared public nuisances and suppressed by the general law.² Money continued, however, to be raised for the public service in this way from the reign of Anne till late in that of George the Third.³ In 1800, an Act was obtained "to enable Sir George Pigot, Bart., Margaret Fisher and Frances Pigot, to dispose of a certain diamond by way of lottery."⁴ Four years afterwards, a well-known firm of engravers, the Boydells, were allowed "to dispose of their collection of paintings, &c., together with their leasehold premises in Pall Mall, called the Shakspeare Gallery, by way of chance."⁵ Peltro William Tonkins was enabled to dispose in the same way of his collection of paintings, together with several copies of certain books, and the lease of the premises called the British Gallery of Pictures.⁶ Robert Bowyer and Dr. Robert Thornton obtained similar privileges.

Private lotteries.

The Pigot diamond.

Boydell's Shakspeare Gallery.

A statute of the same nature, passed in 1806, authorized the Corporation of London to dispose by lottery of several

Corporation of London disposing of

¹ Commons' Committee on Steam Carriages, 1832, evidence of Mr. Farey, p. 53.

² 10 & 11 Will. III. c. 17, s. 1; 5 Geo. III. c. 9, s. 43.

³ The first of these Lottery Acts was 8 Anne, c. 4; the last 49 Geo. III. c. 94.

⁴ 39 & 40 Geo. III.

⁵ 44 Geo. III. c. 6.

⁶ 57 Geo. III. c. 61.

houses by
lottery.
Bridge at
Bishopwear-
mouth.

Glasgow
lotteries.

houses in Picket Street, Temple Bar, and in Skinner Street, Snow Hill, and Fleet Market.¹ So at Bishopwearmouth, in Durham, persons were enabled to dispose by lottery of securities upon the tolls of the iron bridge and ferry-boats attached thereto.² As lately as 1831, Improvement Commissioners in Glasgow obtained, by strategy, powers to establish lotteries under colour of a law passed by the innocent title of "An Act to amend certain Acts passed in the reign of his late Majesty King George the Fourth, for opening a street from the Cross of Glasgow to Monteith Row."³ Here the patience of Parliament gave way, and in 1834 a public statute⁴ prohibited any further lotteries for the improvement of Glasgow under the authority of this private Act.

¹ 46 Geo. III. c. 97; amended by
49 Geo. III. c. 70, and 52 Geo. III. c.
175.

² 54 Geo. III. c. 117.

³ 1 & 2 Will. IV. c. 8, s. 6.

⁴ 4 & 5 Will. IV. c. 37.

APPENDIX A.

ACTS OF PARLIAMENT.

A RETURN "of the Total Number of Acts passed in each Session since the year 1800; distinguishing the Number of Public, Private, and Local and Personal Acts, and the Number relating to Great Britain, England, Scotland, and Ireland, and those relating to the United Kingdom." [*House of Commons' Paper 34, Session 1857.*]

YEAR.	SESSION.	Public Acts.	Local and Personal Acts.	PRIVATE ACTS.		TOTAL.
				Printed.	Not Printed.	
1801	41 Geo. 3	109	146	—	131	386
1801-2	42 Geo. 3	120	119	—	120	359
1802-3	43 Geo. 3	162	147	—	120	429
1803-4	44 Geo. 3	110	89	—	72	271
1805	45 Geo. 3	129	119	—	105	353
1806	46 Geo. 3	158	147	—	79	384
1807	47 Geo. 3, s. 1 ..	56	43	—	30	129
1807	47 Geo. 3, s. 2 ..	78	134	—	61	273
1808	48 Geo. 3	152	157	—	77	386
1809	49 Geo. 3	129	192	—	112	433
1810	50 Geo. 3	119	218	—	96	433
1811	51 Geo. 3	128	221	—	74	423
1812	52 Geo. 3	165	212	—	77	454
1812-13	53 Geo. 3	162	216	—	79	457
1813-14	54 Geo. 3	190	233	—	65	488
			Local Acts.			
1814-15	55 Geo. 3	196	100	71	41	408
1816	56 Geo. 3	142	87	47	29	305
1817	57 Geo. 3	132	76	38	26	272
1818	58 Geo. 3	101	87	39	27	254
1819	59 Geo. 3	138	128	49	44	359
1819-20	60 Geo. 3 & 1 Geo. 4	14	6	—	3	23
1820	1 Geo. 4	119	90	50	18	277
1821	1 & 2 Geo. 4	123	128	45	14	310
1822	3 Geo. 4	127	114	36	11	288
1823	4 Geo. 4	100	126	29	12	267
1824	5 Geo. 4	115	160	40	13	328
1825	6 Geo. 4	134	202	59	21	416
1826	7 Geo. 4	79	142	46	13	280
1826-7	7 & 8 Geo. 4	75	112	61	11	259
1828	9 Geo. 4	95	122	45	8	270
1829	10 Geo. 4	63	136	50	19	268
1830	11 Geo. 4 & 1 Will. 4	75	138	50	16	279
1830-1	1 Will. 4	27	70	7	3	107
1831	1 & 2 Will. 4	60	76	22	16	174
1832	2 & 3 Will. 4	127	113	34	10	284
1833	3 & 4 Will. 4	106	122	30	13	271
1834	4 & 5 Will. 4	96	96	36	10	238
1835	5 & 6 Will. 4	84	112	27	21	244
1836	6 & 7 Will. 4	117	138	35	18	308
1837	7 Will. 4 & 1 Vict.	91	133	43	16	283
1837-8	1 & 2 Vict.	120	102	35	15	272
1839	2 & 3 Vict.	97	107	46	16	266
1840	3 & 4 Vict.	113	131	36	17	297
1841	4 & 5 Vict. & 5 Vict.	72	114	49	14	249
Carried forward ..		4,905	5,661	1,155	1,793	13,514

YEAR.	SESSION.	Public Acts.	Local and Personal Acts.	PRIVATE ACTS.		TOTAL.
				Printed.	Not Printed.	
	<i>Brought forward</i>	4,905	5,661	1,155	1,793	13,514
1842	5 & 6 Vict. ..	123	113	40	19	295
1843	6 & 7 Vict. ..	99	110	29	10	248
1844	7 & 8 Vict. ..	113	108	34	15	270
1845	8 & 9 Vict. ..	130	204	33	4	371
1846	9 & 10 Vict. ..	117	402	43	8	570
1847	10 & 11 Vict. ..	115	297	35	3	450
1847-8	11 & 12 Vict. ..	133	163	22	5	323
1849	12 & 13 Vict. ..	111	95	26	8	240
1850	13 & 14 Vict. ..	116	112	18	7	253
1851	14 & 15 Vict. ..	106	146	23	3	278
1852	15 & 16 Vict. ..	88	168	21	1	278
1853	16 & 17 Vict. ..	137	227	29	5	399
1854	17 & 18 Vict. ..	125	222	38	3	388
1854-5	18 & 19 Vict. ..	134	198	16	7	355
1856 *	19 & 20 Vict. ..	120	139	14	3	276
1857-8	20 & 21 Vict. ..	105	165	7	8	285
1858	21 & 22 Vict. ..	110	150	10	1	271
1859-60	22 & 23 Vict. ..	101	174	8	2	283
1860	23 & 24 Vict. ..	154	203	9	1	367
1861	24 & 25 Vict. ..	134	249	10	—	393
1862	25 & 26 Vict. ..	114	227	6	2	349
1863	26 & 27 Vict. ..	125	238	8	—	371
1864	27 & 28 Vict. ..	121	329	14	1	465
1865	28 & 29 Vict. ..	127	372	9	1	509
1866	29 & 30 Vict. ..	122	363	11	3	499
1867 †	30 & 31 Vict. ..	146	209	9	4	368
1868	31 & 32 Vict. ..	130	182	8	3	323
1869	32 & 33 Vict. ..	117	159	10	2	288
1870	33 & 34 Vict. ..	112	177	4	—	293
1871	34 & 35 Vict. ..	117	206	9	2	334
1872	35 & 36 Vict. ..	98	200	7	1	306
1873	36 & 37 Vict. ..	91	253	2	1	347
1874	37 & 38 Vict. ..	96	200	9	—	305
1875	38 & 39 Vict. ..	96	215	7	—	318
1876	39 & 40 Vict. ..	81	243	2	1	327
1877	40 & 41 Vict. ..	69	242	11	4	326
1878	41 & 42 Vict. ..	79	238	7	—	324
1879	42 & 43 Vict. ..	78	225	8	—	311
1880	43 & 44 Vict. ..	67	211	5	5	288
1881	44 & 45 Vict. ..	72	219	6	—	297
1882	45 & 46 Vict. ..	82	266	5	—	353
1883	46 & 47 Vict. ..	62	232	5	—	299
1884	47 & 48 Vict. ..	78	262	6	—	346
		9,556	14,774	1,786	1,937	28,053

* After the year 1856 these figures have been compiled from the statute book for each year.

† Since 1867 the Acts for confirming Provisional Orders, and a few other public Acts of a local character, have been transferred from the list of Public General to that of Local and Personal Acts. The size of the Public General Statute Book has thus been considerably reduced, but in estimating the results of public and private legislation, as indicated by the number of statutes passed, this change must be remembered. The number of Provisional Order Confirmation Acts and of quasi-public Acts thus transferred, which would otherwise have gone to the credit of the Public General list in the successive years since 1867, is as follows:—1868, 22; 1869, 10; 1870, 14; 1871, 17; 1872, 17; 1873, 27; 1874, 15; 1875, 33; 1876, 52; 1877, 40; 1878, 22; 1879, 41; 1880, 46; 1881, 37; 1882, 42; 1883, 57; 1884, 65. It must be remembered that most of the confirming Acts include several Provisional Orders applicable to separate districts, and each equivalent in effect to a separate Act.

APPENDIX B.

No. I.

A RETURN of the Number of Inclosure Acts passed between the Years 1719 and 1845, distinguishing the Number in each Year.

Year.	No. in each Year.	Year.	No. in each Year.	Year.	No. in each Year.
1719	2	1763	31	1807	76
1720	3	1764	66	1808	91
1721	1	1765	60	1809	92
1722	—	1766	49	1810	122
1723	2	1767	35	1811	107
1724	2	1768	60	1812	133
1725	3	1769		1813	119
1726	3	1770	63	1814	120
1727	2	1771	67	1815	81
1728	4	1772	70	1816	47
1729	5	1773	65	1817	34
1730	7	1774	62	1818	46
1731	3	1775	42	1819	44
1732	5	1776	58	1820	40
1733	3	1777	99	1821	35
1734	2	1778	66	1822	12
1735	4	1779	68	1823	12
1736	2	1780	45	1824	17
1737	4	1781	25	1825	22
1738	4	1782	15	1826	20
1739	5	1783	18	1827	21
1740	3	1784	15	1828	17
1741	4	1785	23	1829	24
1742	6	1786	25	1830	21
1743	8	1787	22	1831	10
1744	1	1788	34	1832	11
1745	2	1789	24	1833	15
1746	1	1790	26	1834	16
1747	4	1791	38	1835*	4
1748	5	1792		1836	10
1749	2	1793	46	1837	9
1750	5	1794	42	1838	19
1751	5	1795	39	1839	19
1752	7	1796	75	1840	14
1753	4	1797	86	1841	22
1754	14	1798	52	1842	12
1755	11	1799	65	1843	11
1756	20	1800	63	1844	7
1757	17	1801	80	1845	3
1758	24	1802	122	Total	—
1759	30	1803	96	to 1845	4,122
1760	24	1804	104		—
1761	21	1805	52		—
1762	39	1806	71		—

* Up to this date, the figures are taken from a Return printed at p. 501 of Report of Commons' Committee on Agricultural Distress, 1836.

No. II.

Inclosure Acts, 1702-1876.

Number of
inclosures,
1800-42.

A House of Commons Return 325, issued in 1843, gives the number of Inclosure Acts passed from the year 1800 to 1842. Between 1800 and 1810, there were 905; from 1810 to 1820, 741; from 1820 to 1830, 192; from 1830 to 1840, 125. Total, to 1842, 1,996. The Return asked for is "of all Acts passed since the year 1800 for the inclosure of Commons or Waste lands in England and Wales, not being held in severalty, distinguishing the parishes and counties in which the same were situated, together with the estimated number of acres in each."

But the following explanatory note is appended to the Return:—"As in most cases it is not stated in the Acts whether the lands to be inclosed were held in severalty or otherwise, this Return includes all the Inclosure Acts passed since the year 1800, whether the lands to be inclosed were held in severalty or not."

Average
extent.

Out of the 1,996 commons inclosed in the forty-two years covered by this Return, the acreage of 634 commons is "not stated." The total acreage of the remaining 1,362 commons inclosed during the period mentioned is 1,892,552. The average extent of the commons fully returned is 1,390 acres. Allowing the same average for the other 634 commons, the total number of acres inclosed in England and Wales during 1800-42, would be about 2,773,812.

Inclosures,
1719-1800.

In Return No. I., taken from the Report of the Committee on Agricultural Distress, 1836, the number of Inclosure Acts between 1719 and 1800, the period not covered in the Return of 1843, is 2,100. Giving to each the same average of 1,390 acres, the area which those inclosures represent would be 2,919,000 acres. This result agrees substantially with the statement in a Return published in the Report of a Committee of the House of Commons in 1797. Covering a somewhat longer period, namely, from 1702, the Return of 1797 gives a total inclosure of 3,142,074 acres.¹ The following figures, therefore, may probably be accepted as representing

1702-97.

¹ See Introduction, p. 25.

approximately the area inclosed from 1702 to 1876, when Parliament took a new departure with regard to inclosures¹:— Commons Act, 1876.

				Acres.	
From the year 1702 to 1796 ²	.....	3,142,074			Estimated
„ „ 1796 „ 1800 ³	.....	369,740			area of
„ „ 1800 „ 1842 ⁴	.....	2,773,812			inclosures,
„ „ 1843 „ 1845 ⁵	.....	27,800			1702-1876.
„ „ 1845 „ 1876 ⁶	.....	671,902			
Total.....				6,985,328	

From the Return of 1843 we give the names of all commons inclosed since 1800, which contained more than 5,000 acres, together with all commons, whatever their acreage, inclosed in Middlesex and Surrey between 1800-43, and the date of each Act:— Inclosures of 5,000 acres and upwards.

Date of Act.	Name of Common.	Parish.	County.	Number of Acres.
1801	Needwood Forest.....	Tutbury, Hanbury, Yoxall, &c.	Stafford.....	9,400
„	Deeping, Langtoft, &c. ..	Market Deeping	Lincoln	13,500
„	Wildmoor Fen	Horncastle, &c.	Lincoln	10,500
„	East and West Fens	Bolingbroke, &c.....	Lincoln	29,348
„	Enfield	Enfield	Middlesex	3,540
„	Barkway and Reed	Barkway and Reed	Hertford	7,000
„	Frimley	Ash	Surrey	Not stated
„	Fetcham	Fetcham	Surrey	620
„	Ewell	Ewell	Surrey	1,200
„	Kettlewell and Conistone	Kettlewell.....	York, West Riding.	8,150
„	Weaverthorp and Helperthorp.	Weaverthorp	York, East Riding.	8,100
„	Farcet Fen, &c.	Stanground-with-Farcet..	Huntingdon and Cambridge.	6,422
1802	Westbury	Westbury	Wilts	5,100
„	Troddermain, Walton Wood, &c.	Lanercost	Cumberland	6,000

¹ 39 & 40 Vict. c. 56, the preamble of which declares that it is desirable “that inclosure in severalty as opposed to regulation of commons should not be hereinafter made unless it can be proved to the satisfaction of the Inclosure Commissioners and of Parliament that such inclosure will be of benefit to the neighbourhood as well as to private interests, and to those who are legally interested in any such commons.”

² Commons’ Return, quoted in Introduction, p. 25.

³ No. of inclosures, 266, averaged at 1,390 acres each.

⁴ No. of inclosures, 1,996, averaged as before.

⁵ No. of inclosures, 20, averaged as before.

⁶ Thirty-first Report of Inclosure Commissioners, 1876, cited *post*, No. III. The acreage here specified is, as in the other cases, that of common and commonable lands, and comprises inclosures confirmed and in progress in 1876.

Date of Act.	Name of Common.	Parish.	County.	Number of Acres.
1802	Effingham	Effingham	Surrey	126
"	West Horsley	West Horsley	Surrey	400
1803	Alston Moor, &c.	Alston	Cumberland	20,000
"	Penrith	Penrith	Cumberland	28,000
"	Heversham	Heversham	Westmoreland	6,000
"	Chedworth, &c.	Chedworth and Compton Abdale.	Gloucester	6,200
"	Wanborow	Ash and Puttenham	Surrey	Not stated
"	Sutton-next-Woking	Woking	Surrey	412
"	Send and Ripley	Send and Ripley	Surrey	1,000
1804	Hoysthorpe and Mumby- cum-Chapel.	Hoysthorpe and Mumby- cum-Chapel.	Lincoln	6,070
"	Ruislip	Ruislip	Middlesex	Not stated
"	Netherdale or Middlesmore	Kirkby Malzeard	York, West Rid- ing.	9,700
1805	Canford Heath	Great Canford	Dorset	9,000
"	Pyrford	Pyrford and Chertsey	Surrey	Not stated
"	Methwold	Methwold	Norfolk	7,375
"	Harmondsworth	Harmondsworth	Middlesex	3,000
"	Dulwich	Saint Giles, Camberwell ..	Surrey	130
"	Bainbridge, &c.	Aisgarth	York, North Rid- ing.	20,000
1806	Lambeth	Lambeth	Surrey	200
"	Holme Cultram, &c.	Holme Cultram	Cumberland	6,170
"	Kirtling and Ashley-cum- Silverley	Kirtling and Ashley-cum- Silverley.	Cambridge	5,000
"	Chiswick	Chiswick	Middlesex	68
"	Cheame	Cheame	Surrey	1,760
"	Staffield	Kirkoswald	Cumberland	5,400
1807	Mere	Mere	Wilts	5,000
"	Thorpe	Thorpe	Surrey	1,400
"	Kingswood	Ewell	Surrey	427
"	Warlingham	Warlingham	Surrey	132
1808	Chertsey	Chertsey	Surrey	2,000
"	Kingston-upon-Thames and Imworth.	Kingston-upon-Thames and Thames Ditton.	Surrey	1,350
1809	Tarretburn	Simonburn	Northumberland	5,300
"	Sutton	Sutton	Surrey	Not stated
"	Dore	Dronfield	Derby	5,000
"	Ashford	Ashford	Middlesex	1,200
"	Lingfield	Lingfield	Surrey	650
"	Hayes	Hayes	Middlesex	2,000
1810	Saddleworth	Saddleworth	York, West Rid- ing.	7,676
"	Horley	Horley	Surrey	700
"	South, otherwise East, Bier.	Soberton, Hambledon	Southampton ..	8,000
"	Bletchingley	Bletchingley and Horne ..	Surrey	800
1811	Finchley	Finchley	Middlesex	900
"	Lune, Holwick, &c.	Romaldkirk	York, North Rid- ing.	7,815
"	Westward	Westward	Cumberland	10,000
"	Hampton	Hampton	Middlesex	Not stated
"	Aberdaron	Aberdaron	Carnarvon	6,000
"	Harefield and Moorhall ..	Harefield	Middlesex	700
1812	Delamere	Delamere	Chester	8,750
"	Bagshot Heath	Windlesham	Surrey	4,156
"	Beddington and Bandon ..	Beddington and Bandon ..	Surrey	500

Date of Act.	Name of Common.	Parish.	County.	Number of Acres.
1812	Brockham and East Betchworth.	Betchworth	Surrey	Not stated
„	Brocklesby and Great Limber.	Brocklesby	Lincoln	7,390
„	Llanrhystid	Llanrhystid	Cardigan	5,000
„	Llanrwst	Llanrwst	Denbigh and Carnarvon.	5,000
1813	High Moor, &c.	Skelton	York	6,000
„	East Bedfont and Hatur..	East Bedfont	Middlesex	13,000
„	Isleworth Lyon	Isleworth, Heston and Twickenham.	Middlesex	7,870
„	Hornsey	Hornsey	Middlesex	400
„	Wainfield St. Mary	Wainfield	Lincoln	6,360
„	Hanwell	Hanwell	Middlesex	350
„	Great Stanmore	Great Stanmore	Middlesex	216
„	Greenford	Greenford	Middlesex	640
„	Llanfihangel, Generglyn, &c.	Llanfihangel Generglyn and Llanganfelin.	Cardigan	10,000
„	Lallham Burway	Lallham or Chertsey ...	Surrey	165
1814	Egham	Egham	Surrey	Not stated
„	Effingham	Effingham	Surrey	130
„	Chiswick	Chiswick	Middlesex	40
„	Thornton Fell	Thornton	York, West Riding.	5,400
1815	Caereinion Ulchoed	Llanerfyl and Llangadfan	Montgomery ..	11,575
„	Chiltern St. Mary, &c. ..	Chiltern St. Mary	Wilts	5,784
„	East and West Mouseley ..	East and West Mouseley ..	Surrey	700
1816	Feckenham	Feckenham	Worcester	5,347
„	Merton Common	Merton	Surrey	90
1818	Cranford	Cranford	Middlesex	395
1819	Harlington	Harlington	Middlesex	820
1820	Chessington	Chessington	Surrey	130
1821	Stoke D'Abernon	Stoke Dawborne and Leatherhead.	Surrey	400
„	Milbourne	Esher and Cobham	Surrey	460
„	Great Bookham	Great Bookham	Surrey	700
1823	Parson's Mead and Broad Green.	Croydon	Surrey	32
„	Kew Green	Kew	Surrey	19
1824	West Drayton	West Drayton	Middlesex	Not stated
1825	Northolt (or Northall) ..	Northolt or Northall ...	Middlesex	Not stated
1826	Lorton	Brigham, Manor of Derwentfells.	Cumberland	5,000
1827	Penge	Battersea	Surrey	430
„	Peckham	Peckham	Surrey	240
1828	Holme	Kirkburton, Almondbury.	York, W. Riding	18,300
1829	Watermillock	Greystoke	Cumberland	5,000
1831	Rothbury Forest	Rothbury	Northumberland	6,000
1837	Kirkby Lonsdale (township of Mansergh).	Kirkby Lonsdale, &c. ..	Westmorland ..	5,000
„	Clun	Clun	Salop	8,600
1838	Strickland, Roger, Whinfell, Helsington.	Kirkby-in-Kendal	Westmorland ..	6,000
1842	Castlerigg and Derwent Water.	Kenrick, Crosthwaite, township of St. John's and Castlerigg.	Cumberland	7,000

No. III.

Inclosure
Commissioners'
Report, 1876.
Common
lands still
uninclosed.

The following extracts are taken from the Thirty-first Annual Report of the Inclosure Commissioners for 1876 :—

“The return printed by order of the House of Commons in 1874 affords the most reliable data we have yet possessed regarding the extent of common lands still uninclosed. It is there shown to be about one-fourteenth of the entire surface of England and Wales, being 2,632,772 acres in extent. Two-thirds of this are in the mountainous and more elevated districts of the country,¹ and one-third in the lower counties. The following table shows the proportions of apparently cultivable, uncultivable, and ‘common field’ lands in each :—

	Apparently cultivable.	Unsuited to cultivation.	Common Field.	Total.
Acres in high district -	520,356	1,425,336	34,585	1,980,277
Do. in low district -	363,633	59,140	229,722	652,495
	<u>883,989</u>	<u>1,484,476</u>	<u>264,307</u>	<u>2,632,772</u>

Land avail-
able for culti-
vation.

“Adding the apparently cultivable and ‘common field’ lands together, there would seem to be more than one million acres still available for improvement, and for extending the productive area of the country. And much of the high land, though unsuitable for cultivation, might be greatly improved for pasturage or plantations, if released from common rights and held in severalty. Nor need any of the present advantages enjoyed by the public be injuriously affected in the process, if suitable provision be made for the labouring poor, and for the recreation and convenience of the neighbouring inhabitants.

Reduction in
agricultural
area.

“The entire extent already dealt with under the General Inclosure Act, and which is now held in severalty or in course of becoming so, amounts to 620,000 acres. But, in the thirty years during which this process has been in operation, an

¹ The *High District* includes Cumberland, Northumberland, Westmorland, West and North Ridings of Yorkshire, Durham, Lancashire, Monmouth, Devon, Cornwall, and Wales. The *Low District*, the rest of England.

abridgment of the agricultural area of the country, more than equivalent to this addition, has been going on. The Census Returns for 1871 show that, in the twenty years from 1851, the area occupied by towns has increased by 489,000 acres. When to this is added the area during the same period taken by railways, say 200,000 acres, there results a total of nearly 700,000 acres thus withdrawn from agriculture.

	Acres.
"Acreage of inclosures confirmed since 1845	590,307
Estimated acreage of inclosures in progress	81,595

"Of the 590,307 acres in confirmed inclosures the number from which public allotments could be required by the Commissioners is 414,155, and the extent set out as public allotments for exercise and recreation, and for gardens for the labouring poor, is as follows, videlicet,—

	Acres.
"For exercise and recreation	1,758
For the labouring poor	2,195"

The inclosures proposed to be sanctioned in 1876 were thirty-four in number, comprising 18,593 acres. We give, as a useful example, the particulars furnished by the Commissioners relating to one of these inclosures, which comprised open arable fields as well as common land:—

"Riccall Common, Riccall Dam, and the open fields, in the parish of Riccall, containing about 1,254 acres, of which 614 acres are waste of a manor, 540 acres arable fields, and 100 acres meadow land. The arable fields and the meadow land, being subject to limited rights, do not fall under the description of lands from which public allotments can be required by us. The common, on which four acres for exercise and recreation and ten acres for labouring poor are to be set out, is about a mile from one end of the village of Riccall, and a mile and a-quarter from the other end, but is otherwise easy of access. The Dam, though nearer to the village and better land, is a low-lying pasture, frequently flooded, and is therefore not suitable for public allotments. There is now a piece of land, belonging to the lord of the manor, on which, by permission, cricket may be played, but it is stated that not much use is made of it for that purpose.

Public allotments, 1845-76.

Riccall,
County of
York.

"The number of cottages is about 120, of which between 60 and 70 have no gardens, or gardens of only about 10 or 15

perches, or under. The lord of the manor lets out about 15 acres, in 52 lettings, all within a quarter of a mile from the village, in pieces of a rood or half a rood each, and these are generally all occupied. Owing to its greater distance from the village and its inferior quality, doubts are entertained whether the plot of land now proposed to be set out from the common for gardens, though the best available, will be fully used. But an exchange may be probably arranged for the permanent advantage of the occupiers of the labouring poor allotment.

"The population of Riccall is 795, entirely agricultural. Selby (population 6,193) is about five miles distant, and the city of York (population 50,765) about ten miles.

Common.

"The 'common,' the soil of which is a sandy loam upon peat and clay, is of little value in its present undrained state for the grazing of cattle, but it is capable of being made very productive land by drainage and deep cultivation. That portion of the waste called Riccall Dam is a low-lying pasture, frequently flooded, and generally much overstocked, there being no authority to give rest to the herbage. This tract and the meadows are capable of much improvement by drainage.

Example of
open and
commonable
fields.

"The 'common field' lands are divided into several hundreds of narrow strips, of such inconvenient shape and diminutive size that their cultivation in an economical manner is an impossibility. The land is arable, and, with the meadow, is occupied during the period of the growth of the crops by 37 owners, who have specified numbers of acres, scattered here and there in patches over its whole extent. When the crops are removed, the land is subject to pasture, not by the owners of the soil as such, but by the owners of common rights, who have also the exclusive right of common of pasture on the 'open fields,' from October to November in one year, and from October to February in the following year, and so on in alternate years.

Strips of
intermixed
ownership.

"Under this most inconvenient and intermixed system of ownership and occupancy disputes are not infrequent, and progress or improvement is clearly impossible. The loss of time and labour of horses and men in passing from one strip to another in the process of cultivation, the narrowness of the patches themselves rendering it impossible in many cases to cross cultivate, or properly clear the land, are most serious hindrances to good farming. It is believed that these lands, after being suitably divided, and held in severalty, will produce at least 40 per cent. more than at present."

No. IV.

After the passing of the Commons Act, 1876, the Inclosure Commissioners (in 1877) reported as follows :—

Inclosure
Commis-
sioners'
Report, 1877.

“The proceedings during the past year have been necessarily confined to putting forward towards completion the inclosures which had received the sanction of Parliament previous to 1869, and to preparing forms and instructions for applications under the Commons Act, 1876. Under that Act nine applications have been received up to the present time, the preliminary inquiries in which are now going on.

“As a new course of proceeding is now about to commence, it may here be convenient to state summarily the general results of the past operation of the Commission under the Act of 8 & 9 Vict. c. 118, for facilitating inclosure of Commons.

“Since the passing of that Act in 1845, during the administration of Sir Robert Peel, more than thirty years ago, nearly 600,000 acres of common and commonable lands have been dealt with. This has been divided among about 26,000 separate owners, in an average proportion of forty-four and a-half acres to each lord of the manor, twenty-four acres to each common-right owner, and ten acres to each purchaser of the lands sold to defray part of the expenses. In many cases the expenses were raised by rate among the persons interested, but this was optional, since such persons had the alternative of selling a portion of the land for that purpose. With that object 35,450 acres were sold, chiefly in small lots, to 3,500 purchasers. The lords of the manors, 620 in number, received as compensation for their rights in the soil, as an average, about one-fifteenth of the acreage of the wastes. These wastes of manors were, under the Act of 1845, made subject to the setting out of allotments for public purposes, and in this respect were distinct from the commonable lands, which are undivided private property, and were not made subject to public allotments.

Inclosure and
allotment,
1845-77.

“As this is the largest and most general distribution of land into small properties that has taken place in this country in recent times, it may be a matter of some interest to know the quality and occupation of the persons into whose hands these lands have passed. To discover this, the legal description, both of allottees and of purchasers of sale allotments, has been taken

Description of
allotment
owners.

from inclosures in which that description is given, one in each of the following counties, viz., Bucks, Cumberland, Chester, Devon, Essex, Hants, Herts, Lancaster, Norfolk, Oxford, Stafford, Sussex, Worcester, and, in Wales, Carnarvon and Carmarthen. Upon this basis, and so far as such an average can be accepted, the proportionate numbers of the different classes of the 26,000 landowners amongst whom the land has been divided are as follows:—Yeomen and farmers 4,736, shopkeepers and tradesmen 3,456, labourers and miners 3,168, esquires 2,624, widows 2,016, gentlemen 1,984, clergymen 1,280, artisans 1,067, spinsters 800, charity trustees 704, peers, baronets, and sons of peers 576, professional men 512, and about 3,000 others in gradually diminishing proportions, but comprising nearly every quality and calling from the Crown to the mechanic, quarryman, and domestic servant. The influence of this change has not been confined to particular counties, but has been more or less felt in all. It has made an appreciable addition to the number of small landholders in England, bringing upon hitherto comparatively unproductive wastes the individual interest and intelligence of a numerous and varied body of persons, by whose industry the best of these lands have been made not only useful to their owners, but have become available for sale and purchase, and, in their improved condition, for bearing their just share of county and parish rates and public taxes.

Small land-
holders.

Roads and
works.

“More than 2,000 miles of public roads have been constructed at the cost of the common-right owners, in addition to the numerous accommodation roads set out for their special use in giving convenient access to their several allotments. Other works of a public nature, such as embanking and straightening the course of rivers connected with inclosures, have been executed. The total estimated value of the wastes inclosed amounts to 6,140,000*l*. The value of the land taken from the best of this for public purposes (comprising land for recreation, field-gardens, public quarries, fuel, schools and churches, burial grounds, and other purposes, and public roads) has been estimated at 282,140*l*. To this must be added the cash, raised by rate, or sale of property, and expended on the construction of public roads and other public works connected with inclosures, 473,500*l*., making together 755,640*l*. Comparing this with the fee-simple value above mentioned, it appears that nearly one-eighth of the whole value of the wastes inclosed has, under the direction of the Commissioners, and with the assent of the pro-

Value of
wastes in-
closed; and
of public
allotments.

proprietary interests, been devoted to objects of public utility and convenience.

“Thus, in the course of one generation, an extent of land equal to that of a county has been redeemed from common and waste, and has been divided among a far larger and more varied body of landowners than that of any county in England. Valuable public roads of great extent have been constructed, opening up for business and pleasure many otherwise inaccessible localities, and at no cost to the public. The area of production and employment has been increased, and in the same proportion that of public and local taxation has been extended. A great number of small landed properties have been created, and labourers’ field-gardens in the rural districts have been afforded in larger proportion to the extent of the land than appear by the Agricultural Returns to exist elsewhere in England.”

Results of inclosures.

Roads.

“Upwards of two million acres of common land are believed yet to remain uninclosed. Though the best of the land was probably first dealt with, there can be little doubt that much of this may be advantageously brought under the operation of the new law, which, in the altered state of the circumstances since 1845, provides more fully for the public interests of the neighbourhood and of large populations, and at the same time may still be found, in less populous quarters, the useful instrument of adding some considerable extent of available land to the solid resources of the country.”

Land still uninclosed.

“The number of applications of all kinds since the passing of the Acts has been 7,327. The number of cases since the last Annual Report is 176, nine being for inclosure. The following is an abstract of proceedings:—

Work of Commissioners, 1845-77.

Applications.	Prior to last Report.	Since last Report.	Total.	Confirmed.	Otherwise disposed of.	In Progress.
Inclosures	1,254	9	1,263	939	308	16
Exchanges	5,528	163	5,691	4,919	601	171
Partitions	206	3	209	168	33	8
Conversions into regulated Pastures	2	..	2	2	..	..
Divisions of intermixed Lands	40	..	40	33	7	..
In reference to Local Acts....	47	..	47	39	8	..
To define lost Boundaries	35	..	35	27	5	3
Application of Money received under Lands Clauses Consolidation or Railway Acts..	32	1	33	28	2	3
To apportion fixed Rents	7	..	7	6	1	..
Total.....	7,151	176	7,327	6,161	965	201 ”

APPENDIX C.

Names of Persons incorporated, in 1805, into Thames Archway Company (45 Geo. III. c. 117, s. 1).

John Alnutt, — Butt, Francis Bernasconi, — Bell, Thomas Broughton, William Bell, George Bedford, Harvey Christian Combe, — Combe, junr., — Campbell, Edward Campbell, Peter Campbell, Samuel Cooke, William Chapman, John Wyatt Dobbs, Henry Dobbs, Sir James Durno, Thomas Dobbs, Peter Davey, Robert Elliott, John Eginton, William Bosworth Farn, John Graham, Edward Gray, J. C. Hanbury, Thomas Harvey, William Harvey, Charles Harman, Thomas Herbert, Abraham Bailey Herbert, Thomas Herbert, junr., H. Hosch, Thomas Hall, Robert Johnson, Edward Jackson, Thomas Cartwright Jackson, James Losh, William Losh, Daniel Rolfe Munn, John Matthewson, Alexander Mundell, Thomas Oldfield, Charles Pearson, Osborne Punshon, Thomas Poynder, Robert Robson, William Rotherham, — Rankin, — Russel, George Robinson, William Ritchie, Hayter Reed, — Roper, Thomas Rowcroft, Thomas Smith, Hannah Symons, Edward Stracy, John Southern, William Stratford, Charles Smart, Samuel Sawyer, Charles Hampden Turner, James Taddy, — Thornton, William Vazie, Robert Vazie, Phoebe Vazie, George Vazie, Francis Vazie, Thomas Willimott, Thomas Wyatt, Charles Wyatt, H. P. Ward, Jeffry Wyatt, T. W. Wistinghauson, Henry Wyatt, Charles Wheeler, William Wright, Joseph Wilson.

Names of Persons incorporated, in 1824, into Thames Tunnel Company (5 Geo. IV. c. 156).

Edward Richards Adams, Richard Adams, Jesse Adams, James Hughes Anderdon, George Appleton, John Lavicount Anderdon, Francis Atkinson, William Atkinson, William Rowland Arnold, James Bandinal, Timothy Bramah, Francis Bramah, Edward Bramah, Thomas Brandram, Alexander Baring, James Barbet, Henry Birkbeck, Thomas Bird, John Bird, R. B. Bourne, James

Broadwood, Thomas Brunton, William Brunton, Isambard Brunell (*sic*) junr., Henry William Billinghamurst, John S. Burn, H. Burt, William Bayne, John Weltran Buckle, John Browne, George Carr, Sir Edward Codrington, Thomas Robert Crosley, Isaac George Currie, David Chambers, Alexander Clugston, Robert Davies, Thomas Davies, the Reverend William Davies, John Delanney, Sir William Domville, William Domville, junr., Bryan Donkin, James Donovan, Jonathan Druce, Frederick Dubuissou, John Abraham Droop, Abraham Evans, Thomas Elliot, Nathaniel Ellison, Charles Edmonds, John Elliott, Charles Francis, Joseph Farey, Charles Franks, Frederick Franks, Richard Fell, Charles Field, George Field, John Finch, Sir Charles Flower, Charles Larkin Francis, Joseph Fry, John Fryer, William Fry, Arthur French, Hugh Gray, Alexander Green, Samuel George, Gabriel Gillett, Aaron Asher Goldsmid, George Gooch, Joseph Grout, George Guilloneau, C. Gill, J. Grice, Alexander Green, Francis Giles, Joseph Hadland, Henry Hadland, Miss M. Hawes, Thomas Hawes, Benjamin Hawes, junr., William Hawes, Miss Sarah Hawes, Colonel George Hallam, Christopher Hal Greeke, William Alers Hankey, Richard Peckover Harris, Charles Harris, Robert Harris, Sir John Harrington, William Hawksey, James Heygate, junr., William Hitchman, William Howard, William Holmes, John Hughes, Robert Hunter, Robert Huntley, William Jameson, Charles Jacob, John Jacob, Richard Davis Jacob, S. Jacques, James Law Jones, Henry Kater, William King, David Laing, George Laing, Edward Lee, Robert Lee, Sir Gregory Lewin, William Luard, John Lynn, James Lynn, Robert Lovick, J. Lock, Lewis Mallett, Robert Humphrey Martin, William Manfield, Frederick Manning, Henry Marriott, John Martineau, William Mason, Charles McCarthy, Alexander MacDonald, Ann Meilan, Louisa Meilan, Amelia Meilan, Edward Meyrick, John Lewis Minet, William Miller, C. D. Molton, John Monat, Thomas Murdock, George Mallandain, Henry Miller, William Morris, John W. Nelson, John Nolloth, William Pratt, Miles Palmer, William Prater, Sir William Parker, John Pearson, Philip Perring, Edward Price, Joseph Procter, W. Mills Pulley, William Pulley, Joseph Pulley, Edward H. Plumtree, John Harcourt Powell, Frederick Perkins, Thomas Poynder, George Raikes, William Bacon Rawson, James Alexander de Reimer, William Richards, George Richards, George Ritchie, Ann Roberts, Dr. William Robertson, M.D., John Rawlins, Henry Rochas, Charles James

Swann, Richard Sanderson, John Satchell, Peter Stainsby, Solomon Sawrey, Robert Stanton, Thomas Steel, the Hon. Edward Richard Stewart, Samuel White Sweet, Charles Scott Stokes, Richard Spencer, Henry Spencer, James Sheldon, Anthony Spedding, Baron Segulier, George Smith, Octavius H. Smith, William Smith, Peter Still, Richard William Silvester, Russell Scott, John Somervill, George Richard Scott, George Edmund Shuttleworth, Henry Holland Stutzer, Thomas H. Seymour, Miles Steele, James William Stuart, Philip Taylor, John Taylor, Richard Twining, George Twining and John Alfred Twining, Alderman Thompson, Thomas Tyndall, John Wansey, Henry Wansey, junr., Nicholas Waring, Francis Waring, George Wedd, John Bazeley White, William Williams, Thomas Wilkinson, Charles Wilkinson, Peter Wright, William Wilson, Sophia Wilkinson, Thomas Wilson, W. Wilkinson, John Whitshaw, William Whitmore, junr., George Whitmore, Edward William Windus, Thomas Windus, Alexander Luard Wollaston, Charles Wollaston, Frederick Luard Wollaston, George Hyde Wollaston, William Hyde Wollaston, M.D., Francis Hayles Wollaston, the Rev. Henry John Wollaston, Edward Luard Wollaston, Thomas Wood, John Wolley, Lewis Mortlocke Wolfe, Alexander Francis Wornell, Alfred Wyatt, Joseph Wallington, C. Weltden, and George Youll.

APPENDIX D.

Names of Persons incorporated, in 1821, into the Stockton and Darlington Railway Company (1 & 2 Geo. IV. c. 44, s. 1).

Benjamin Atkinson, Jonathan Backhouse the younger, Henry Belcher, John Baxter, Robert Barclay, Richard Blanchard, Henry Birkbeck, Andrew Brown, Robert Bald, Lord Viscount Barrington, Robert Botcherby, John Backhouse, William Braithwaite, Jeremiah Cairns, Warcop Consett, William Cust, John Coates, Christopher Dove, William Dove, William Nicholas Darnell (clerk), John Davison, Thomas Eeles, William Addison Fountaine (clerk), Benjamin Flounders, John Ralph Fenwick, William Gent, William Gill, Joseph Gurney, Joseph John Gurney, Samuel

Gurney, Barrick Hodgson, Thomas Jennett, Richard Jackson, John Janson, William Janson, John Kitching, Robert Kirby, William Leatham, George Lockwood, Thomas Meynell, George Meynell, Richard Miles, Thomas Miles, John Mewburn, George Middleton, Simon Martin, Henry Newman & Brothers, Joseph Pease the younger, Thomas Benson Pease, Edward Pease, John Pease, Daniel Mitford Peacock (clerk), Harriet Peacock, Richard Pickersgill, Matthew Plummer, William Richmond, Leonard Raisbeck, Thomas Richardson, Thomas Pickering Robinson, Thomas Rogers, Richard Scott, Mathew Scotson, Henry Stapylton, Francis Storey, Ellen Storey, William Skinner, William Skinner the younger, William Sleigh, John Trotter, Thomas Taylor, Thomas Allison Tennant, William Tate, George William Todd, Anthony Thistlethwaite, John Wardell the younger, Cuthbert Wigham, Mathew Wadeson, John Wilkinson, Charles Benjamin Walker.

Names of Persons incorporated, in 1826, into the Liverpool and Manchester Railway Company (7 Geo. IV. c. 49, s. 1).

The Most Noble George Granville, Marquess, of the county of Stafford, Charles Lawrence, Robert Gladstone, John Moss, Joseph Sanders, Robert Benson, Hugh Hornby Birley, Henry Birley, Benjamin Booth, Henry Booth, Thomas Shaw Brandreth, Joseph Pilkington Brandreth, Thomas B. Birch, Samuel Blain, William Blain, Thomas Booth, Robert Benn, John Cropper, Edward Cropper, Richard Dawson, Ambrose Dawson, John Ewart, Joseph Ewart, Lister Ellis, Thomas Forsyth, R. H. Gregg, George Grant, James Robert Gower, David Gladstone, Hugh Gladstone, William Gibsone, Richard Harrison, Adam Hodgson, Isaac Hodgson, Joseph Hornby, Arnold Harrison, Henry Harrison, David Hodgson, William Jones, Aaron Lees, William Latham, Wellwood Maxwell, Henry Moss Alexander Maxwell, Thomas Ogilby, William Potter, William Rathbone, Theodore Rathbone, Richard Rathbone, Edward Rogers, William Rotheram, John Ryle, Thomas Sharpe, William Smith, Charles Tayleure, William Ward, Joshua Walmsley, and John Wilson.

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